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Statesman Edition — Vol. XII

Charles Sumner

HIS COMPLETE WORKS

With Introduction

BY

HON. GEORGE FRISBIE HOAR

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CONGRATULATIONS ON THE PRESIDENTIAL ELECTION

Speech at a Public Meeting at Faneuil Hall, Boston, November 8, 1864.

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At an impromptu meeting for congratulation, on the evening of the Presidential election, as the votes were announced, there were speeches by Mr. Hooper, Mr. Sumner, Dr. Loring, Mr. Rice, and Mr. Everett. Mr. Sumner spoke as follows.

FELLOW-CITIZENS, — The trumpet of victory is now sounding through the land, "Glory, Hallelujah!" [*Loud cheers.*] It is the silver trumpet of an archangel, echoing in valleys, traversing mountains, and filling the whole country with immortal melodies, destined to awaken other echoes in the most distant places [*cheers*], as it proclaims "Liberty throughout all the land, unto all the inhabitants thereof." [*Great applause.*]

Such is the victory we celebrate, marking an epoch in our history and in the history of the world. But beyond immediate victory are two things not usually occurring together, — a funeral and a birth. [*Great laughter and applause.*] The funeral we celebrate is of the Democratic party, which we bury to-night with all the dishonors that belong to it. Loathsome with corruption while still above ground, let it be hurried out of sight, where it will no longer be a nuisance. [*Tremendous cheering.*]

The Democratic party had ceased to be patriotic. It was in sympathy with the Rebellion, so much so as to be its *Northern wing.* Such a party could not exist in a country that had determined to exist. It was an outrage and a shame, and hereafter it can never be mentioned except with judgment. [*Cries of "That's so!" and cheers.*]

The extent of its degradation is seen in the frauds it has perpetrated to influence this election. Nothing so mean as these. Fraud is always odious; but it becomes more so in proportion to the occasion on which it is employed. It is odious in small things, — doubly odious in greater things. To cheat one man is crime; to cheat a whole class of men is greater far. But if these men be citizen soldiers fighting for their country, and it is proposed to cheat them of their votes by barefaced fraud, I know no language to depict the despicable and most intolerable enormity of the offence. And yet this is the fraud attempted, — happily the last and dying fraud of the Democratic party. [*Applause.*] Do you inquire the origin of this fraud, and its vicious energy? I answer, It is Slavery. Men who make up their minds to sustain Slavery stick at nothing. If willing to forge chains, they will not hesitate to forge votes. If ready to enslave their fellow-men, they will not hesitate to cheat soldiers. Therefore all these recent frauds are derived naturally out of that baseness and insensibility to right bred of Slavery. [*Applause.*] But these frauds testify against the Democratic party, that undertook to perpetrate them.

There was an English monarch, whose head, as it dropped from the block, was held up to the people, while a voice cried, "This is the head of a traitor!" Thus do

I hold up the head of the Democratic party, and say, "This is the head of a traitor!" Let it be buried out of sight, and let the people dance at its funeral. [*Tremendous applause.*]

I have said that we celebrate a birth, as well as a funeral. The birth is the new life of our country, born to-day into assured freedom, with all its attendant glory. The voice of the people at the ballot-box has echoed back that great letter of the President, "To whom it may concern" [*laughter and loud cheers*], declaring the integrity of the Union and the abandonment of Slavery the two essential conditions of peace. [*Loud applause.*] Let the glad tidings go forth, "to whom it may concern," — to all the people of the United States, at length now made wholly free, — to foreign countries, — to the whole family of man, — to posterity, — to the martyred band who have fallen in battle for their country, — to the angels above, — ay, and to the devils below, — that this Republic shall live, for Slavery is dead. This is the great joy we now announce to the world. [*Here there was a perfect torrent of approving cheers.*]

From this time forward, the Rebellion is subdued. Patriot Unionists in the Rebel States, take courage! Freedmen, slaves no longer, be of good cheer! The hour of deliverance has arrived. [*Renewed cheering.*]

JUBILEE OF LIBERTY.

LETTER TO THE YOUNG MEN'S REPUBLICAN UNION OF NEW YORK, NOVEMBER 10, 1864.

A PUBLIC meeting, called a Jubilee, was held at the Cooper Institute, New York, to celebrate the recent victory at the polls. Among the letters read was the following.

BOSTON, November 10, 1864.

DEAR SIR, — It will not be in my power to meet with the Union citizens of New York at the "Jubilee" of Friday evening, according to the invitation with which you honor me. But my joy will mingle with theirs.

The occasion you celebrate is worthy of jubilee, which in the Hebrew language is simply "the blast of a trumpet," and now, in all languages, signifies "rejoicing."

The occasion is kindred to that famous jubilee in sacred history, when the mandate went forth, "*Proclaim Liberty throughout all the land,* unto all the inhabitants thereof: it shall be a jubilee unto you; and ye shall return every man unto his possession, and ye shall return every man unto his family." And now this same mandate has gone forth, assuring the return of patriot Unionists to their possessions, and the return of patriot soldiers to their families, and crowning all with Universal Emancipation, sign and seal of union and peace. Such is the mandate of the American people in the

reëlection of Abraham Lincoln. I pray that it may all be executed promptly and triumphantly.

Thank God, the pettifoggers of compromise are answered by the people, who demand peace on the everlasting foundations of Union and Liberty. The political barbers, who undertake to prescribe, when they can only shave, are warned that their quackery is at an end.

Accept my thanks and best wishes, and believe me, dear Sir, very faithfully yours,

CHARLES SUMNER.

FRANK W. BALLARD, Esq.,
Corresponding Secretary of the
Young Men's Republican Union.

MR. ASHLEY AND RECONSTRUCTION.

Letter to a Public Banquet in Honor of Hon. James M. Ashley, at Toledo, Ohio, November 18, 1864.

Boston, November 18, 1864.

DEAR SIR, — It will not be in my power to unite in the banquet to your most faithful Representative.

I know Mr. Ashley well, and honor him much. He has been firm when others have hesitated, and from an early day saw the secret of this war, and, I may add, the secret of victory also. In all questions of statesmanship, which will soon supersede military questions, he has already given assurance of practical wisdom. His various indefatigable labors and his elaborate speech on "Reconstruction" show that he sees well what is to be done in order to place peace and liberty under impregnable safeguards.

For myself, I have no hesitation in saying, that, next to the Rebellion itself, I most deprecate a premature State Government in a Rebel State. Such a Government will be a source of sorrow and weakness incalculable. But I am sure that your Representative will fail in no effort to prevent such a calamity.

There is also the Amendment of the Constitution

prohibiting Slavery throughout the United States. Nobody has done more for it, practically, than Mr. Ashley.

Accept my thanks for the invitation with which you have honored me, and believe me, dear Sir,

Faithfully yours,

CHARLES SUMNER.

TO THE COMMITTEE.

CASE OF THE FLORIDA:

ILLUSTRATED BY PRECEDENTS OF BRITISH SEIZURES IN NEUTRAL WATERS.

ARTICLES IN THE BOSTON DAILY ADVERTISER, NOVEMBER 29, 1864, AND JANUARY 17, 1865.

THE case of the Florida attracted attention at the time, and aroused the British press. Especially to meet the criticism of the latter the first of the following articles was written. Though published in a newspaper anonymously, its authorship was recognized and acknowledged, and it was reprinted in a pamphlet by the Young Men's Republican Union of New York.

The Florida was a Rebel war-steamer, built in England, which had done damage to our commerce. After capturing and burning the bark Mondamon off Pernambuco, it arrived at Bahia Bay, October 5, 1864, where the United States steamer Wachusett, with Captain Napoleon Collins as commander, was then lying. The Florida at first anchored in the offing, but, at the invitation of the Brazilian admiral, came inside in the midst of the Brazilian fleet, and close under the guns of the principal fort. At about three o'clock on the morning of October 7th, the Wachusett slipped her cables, and, with full head of steam, bore down upon the Rebel war-vessel, one half of whose officers and crew, including Captain Morris, were on shore, and the remainder, having just returned, were in no condition to repel an assault. The officer of the deck, supposing the collision which he saw imminent merely accidental, cried out, "You will run into us, if you don't look out." The design of Captain Collins was to strike the Florida amidships, crush in her side, and send her at once to the bottom; but this was not accomplished; the Wachusett struck only the stern, carrying away the mizzen-mast and main-yard, so that the Rebel vessel was not seriously injured, but the broken spars fell across the awning over the hatchway, and thus prevented her crew from getting on deck. In the confusion that

ensued several pistol-shots were fired from both vessels, at random and without effect. Two of the Wachusett's guns were discharged, — by accident, according to one report, or, as another had it, by order of a lieutenant. The shots did not strike the Florida. Captain Collins cried out immediately, "Surrender, or I will blow you out of the water!" The lieutenant in charge of the Florida replied, "Under the circumstances I surrender." In an instant the vessel was boarded by men from the Wachusett, who made her fast by a hawser to their own vessel, which at once turned her course seaward, moving at the top of her speed and towing the Florida in her wake.

The Wachusett was challenged from the Brazilian fleet, but there was no reply. The Florida, when commanded to stop, answered that she was towed by the vessel in front. Shortly afterward the heavy guns of the fort opened fire. Three shots passed harmlessly above the pennant of the Wachusett, striking the water beyond. Two vessels of the Brazilian fleet gave chase, but soon abandoned it, and the Florida was brought to Hampton Roads, where it was anchored.

Meanwhile the case passed into diplomacy. Mr. Seward addressed a note, under date of November 11th, to Mr. Webb, the minister of the United States at Rio Janeiro, directing him to say that the Government of the United States was not indisposed to examine the subject upon its merits carefully, and to consider whatever questions might arise out of it in a becoming and friendly spirit, if that spirit was adopted by his Imperial Majesty's Government. The Brazilian representative at Washington, in a note dated December 12th, expressed the belief that the Government of the United States would give the explanations and reparation which, in conformity with international laws, are due to a power that maintains friendly and pacific relations with it. Mr. Seward, in his reply, dated December 26th, disallowed the assumption that the Rebels were "a lawful naval belligerent," and asserted, that, being still "destitute of naval forces, ports, and courts," the ascription of that character to them by Brazil "is an act of intervention in derogation of the Law of Nations, and unfriendly and wrongful, as it is manifestly injurious, to the United States." He also disallowed the assumption that the Florida belonged to the Rebels, and maintained, "on the contrary, that that vessel, like the Alabama, was a pirate, belonging to no nation or lawful belligerent." He added, that it did not belong to captains of ships-of-war of the United States, acting without authority, to assert the rights and redress the wrongs of the country. The captured crew, being unlawfully brought into the national custody, could not be lawfully subjected here to the punishment they deserved, and were therefore set at liberty. Then follows this statement with

regard to the vessel: "The Florida was brought into American waters, and was anchored under naval surveillance and protection at Hampton Roads. While awaiting the representation of the Brazilian Government, on the 28th of November, she sunk, owing to a leak which could not be seasonably stopped. The leak was at first represented to have been caused, or at least increased, by a collision with a war transport." After stating that there were courts of inquiry on the subject, he concluded: "In the mean time it is assumed that the loss of the Florida was a consequence of some unforeseen accident, which cast no responsibility upon the United States."[1] Nothing further occurred in this case.

The *Advertiser*, in a leader on this article, after alluding to the author as "a gentleman whose position and pursuits have led him to give great attention to questions of International Law," says: —

"We ask attention to his view of the precedents, therefore, and to the connection which he establishes between them and the present case, as being both interesting and instructive, and as deserving no small weight in settling our views upon this important subject. He makes it clear, that, whatever Brazil may feel herself called upon to say in the matter, it does not lie in the mouth of England, either by her press or her ministry, to intermeddle by lecturing the United States. . . . . The most embarrassing feature in the Florida case, however, has been removed within a few hours by the fortuitous collision of an army transport with this steamer, in the crowded roadstead at Fortress Monroe."

Admiral Porter's despatch reports this incident.

"Fortress Monroe, November 28, 1864.

"Hon. Gideon Welles, *Secretary of the Navy:* —

"I have just received a telegram from the commander of the prize steamer Florida, informing me that she had sunk in nine fathoms of water. She had been run into by an army steamer, and badly damaged. I have not heard the particulars. I will inform the Department, when I receive the written report.

"David D. Porter, *Rear-Admiral.*"

IF we may judge from recent English newspapers, there is to be another cry against us, on account of the Florida, not unlike that on account of the Trent. One paper says the seizure was "most flagrantly law-

[1] Appleton's Annual Cyclopædia, 1864, art., *Diplomatic Correspondence*, pp. 364 – 366.

less"; another, that "the precedent will establish a claim to the right to pursue and destroy every such vessel, whatever may be the port in which she may seek shelter or supplies"; another, that "the outrage cannot be permitted to pass unnoticed by other powers"; and still another, that "events such as these will speedily force European nations to interfere in the American difficulty for their own security." Such are specimens of British criticism, before the facts in the case have been ascertained in any authentic form, and before our Government has had opportunity to declare itself on the subject.

The same swiftness occurred in the matter of the Trent. The parallel will be complete, if Earl Russell sends us a letter of complaint.

As in that remarkable instance, there is the same indifference to *historic precedents*. I do not refer to cases decided in prize courts, where the question is of *strict law*, which must prevail, — as where Sir William Scott decreed restitution of a vessel captured by a British privateer stationed among the mud islands at the mouth of the Mississippi, and within the neutral territory of the United States. I refer to another class of precedents, not to be found in judicial decisions, but in the history of Great Britain. And as, in the instance of the Trent, it appeared that this power had for several generations, under a pretended claim, entered on board foreign ships and forcibly dragged away persons from the protection of their flag, thus doing on a large scale what was done by Commodore Wilkes on a very small scale, — so it appears that this same power, whose newspapers are now swift to condemn the act of Captain Collins, has for many generations been in

the habit of seizing or destroying vessels in neutral waters.

Judicial decisions exhibit the strict law obligatory on courts. *Historic precedents* exhibit the practice of nations, where strict law is often modified by considerations of necessity or policy. The first, as a general rule, concern private rights; the second, as a general rule, concern public rights. The first are questions for the court; the second are questions for executive deliberation and for diplomacy. It is needless to add that the case of the Florida is not a case of private rights. It is an historic incident, destined hereafter to be a precedent, which will be determined by the executive, and not by the judiciary. If the Florida were an ordinary private ship, claimed by private individuals, it would naturally fall under the cognizance of a prize court. But it is claimed as a public ship, which, as is well known, is not subject to the jurisdiction of a prize court. Or, assuming its private character by reason of its piratical origin, there are questions involved which must ultimately come under the cognizance of the Executive, and which belong to the history of the country.

Of course, the general principle of International Law applicable to such an incident is beyond question. It is found in the authoritative words of the Dutch publicist, Bynkershoek, when he says, "Certainly it is by no means lawful to attack or take an enemy in the port of a neutral who is in amity with both parties." [1] Chancellor Kent, a great authority, enforces the same principle, when he says, "It is not lawful to make neutral territory the scene of hostility, or to attack an

[1] Quæstiones Juris Publici, tr. Du Ponceau, Lib. I. cap. 8.

enemy while within it."[1] General Halleck, in his excellent work on International Law, says: "Hostilities cannot be lawfully exercised within the territorial jurisdiction of the neutral state which is the common friend of both parties." And he follows this compendious statement with the remark, that "the Government of the United States has invariably claimed the absolute inviolability of neutral territory."[2] As early as 1793, our Government gave its adhesion to this principle in a case where Great Britain and France were the hostile parties. The British merchant-ship Grange was captured in Delaware Bay by a French frigate, and brought into Philadelphia, to which port she was bound. Mr. Jefferson, in a gossiping letter to Mr. Monroe, under date of May 5, 1793, says: "Upon her coming into sight, thousands and thousands of the yeomanry of the city crowded and covered the wharves. Never before was such a crowd seen there; and when the British colors were seen reversed, and the French flying above them, they burst into peals of exultation."[3] The British minister, addressing himself at once to our Government, demanded restitution of the captured vessel, then within our jurisdiction. The French minister insisted that Delaware Bay was an open sea, so that the original capture was lawful. *But the ship was restored.* Washington was at the time President, and Jefferson Secretary of State. It is not known that there was any appearance in the prize court with reference to the Grange. It was settled by diplomacy, as will be seen by a formal letter of the Secretary of State addressed to the French minister, where he says: "I am charged by

[1] Commentaries on American Law, Vol. I. p. 117.
[2] International Law, pp. 517, 520.
[3] Writings, Vol. III. p. 548.

the President of the United States to express to you his expectation, and at the same time his confidence, that you will be pleased to take immediate and effectual measures for having the ship Grange and her cargo restored to the British owners, and the persons taken on board her set at liberty." [1] The general principle illustrated by this striking case has been maintained by our Government ever since. If any reader is curious to see an elaborate vindication of it, I refer him to a very animated article in the "Boston Gazette" for 1814, transferred to "Niles's Register," [2] where the inviolability of neutral territory is upheld, especially against the open pretensions of Great Britain.

This general principle may seem at first view conclusive with regard to the Florida. If this vessel, now lying within the jurisdiction of the United States, were an ordinary private ship, cognizable in a prize court, or if it were still within the jurisdiction of Brazil, it might be so. But it remains to be seen whether there are not decisive considerations, *distinguishing this case from every other*, which will justify our Government, while recognizing the violation of Brazilian territory, and making all proper apologies, *at least in declining any restitution of the ship*. On this point it is not necessary to express an opinion. I began by allusion to the reckless judgments of British journals, tending to excite a cry against our country; and my present object will be accomplished, if I exhibit those *historic precedents* which must close the British mouth, whenever it opens to condemn a capture like that of the Florida.

[1] To M. de Ternant, May 15, 1793: Jefferson's Writings, Vol. III. p. 561.
[2] Vol. VI. pp. 348, 352, July 23, 1814.

1. It was in the reign of Queen Elizabeth that England began to contest the supremacy of the seas; and it was in this same reign that this domineering power began those pretensions under which neutral rights of all kinds were set at nought. As early as 1567, Hawkins, fresh from a slave-trading voyage in the ship "Jesus," fired at a Spanish ship in the harbor of Plymouth, and forced her to lower her flag. The Spanish ambassador said indignantly to Elizabeth: "Your mariners rob my master's subjects on the sea; they plunder our people in the streets of your towns; *they attack our vessels in your very harbors.* I entreat your Majesty to punish this last outrage at Plymouth, and to preserve the peace between the two nations."[1] Elizabeth gave a smooth answer, and that was all.

2. Not long afterwards Admiral Drake entered the harbor of Cadiz, where he scattered, sunk, and burned an immense fleet of Spanish transports, and then did the same thing in the harbor of Lisbon. There were apologies on the part of Elizabeth; Burleigh wrote a crafty letter; the Admiral was disavowed; but this was all.[2] Among the ships seized at Lisbon were no less than sixty belonging to the Hanse Towns. *These towns vainly demanded their restitution.* Philip of Spain, at that time sovereign of Portugal, was equally unsuccessful, although, by way of retaliation, he drove from Lisbon the factors of the Company of English Merchants.[3]

Such are some of the earliest historic precedents.

[1] Froude, History of England (London, 1863), Vol. VIII. pp. 481–483.

[2] Motley, History of the Netherlands, Vol. II. pp. 284, 285.

[3] Cussy, Phases et Causes Célèbres du Droit Maritime des Nations, Tom. II. p. 60.

3. In similar defiance of unquestionable right, the Dutch East India fleet, in 1665, which had put into Bergen in Norway, was attacked by the English in this neutral port. On this outrage Vattel remarks: "But the Governor of Bergen fired on the assailants, and the Court of Denmark complained, perhaps too faintly, of an enterprise so injurious to its dignity and its rights."[1]

4. Throughout the seventeenth century numerous incidents illustrate the pretensions of Great Britain; and so also in the next century. Émérigon, the famous French authority on the Law of Insurance, mentions one which deserves notice. In 1757, a French bark, La Victoire, chased by a British privateer, sought refuge in the neutral waters of Majorca, where she anchored within pistol-shot of the shore. The British privateer seized the bark, notwithstanding three shots fired from the castle. A few days later the prize was recaptured by a French privateer. The original owners of the bark claimed her, on the ground that her capture was null; but the court of prizes awarded one third to the recaptor.[2] The learned author fails to record any reparation by Great Britain.

Advancing to later times, the historic precedents multiply. I pass over a considerable period, not without examples, and come at once to those occurring in the protracted war against the French Revolution.

5. War had hardly begun, when, in 1793, the port of Genoa was the scene of an incident differing from

[1] Le Droit des Gens, Liv. III. ch. 7, § 132.

[2] Émérigon, Traité des Assurances (Marseille, 1783), Tom. I. p. 500, Ch. 12, § 23. See, also, Azuni, Droit Maritime de l'Europe Paris, An VI.), Tom. II. p. 306, note, Part. II. ch. 4, art. 4, § 5.

that in Bahia only in its very aggravating circumstances, and in the bloodshed that ensued. The French frigate La Modeste was quietly at anchor in this neutral harbor when a British ship-of-the-line came alongside. Suddenly the British commander summoned the Frenchman to surrender. On his refusal, the frigate was boarded, and three hundred of the unarmed crew were massacred. The frigate was carried to England. Such is the account given by a French author, who complains bitterly that the British Government did nothing to punish the outrage. The Genoese Government was powerless; and the French Convention, in a decree marked by great moderation, proceeded to release it from all responsibility, although at a later day it appears to have paid two millions of francs as an indemnity.[1] The reader curious in dates will not fail to observe that it was in the very year when the neutrality of Genoa was thus set at defiance that the British minister in the United States claimed the surrender of a ship seized by a French frigate in defiance of our neutrality. Such are famous contradictions of national conduct. A British ship captured by France in neutral waters was surrendered at the demand of Great Britain ; a French ship captured by Great Britain in neutral waters was hurried off by the captor as prize of war.

6. The same author who has described the outrage in the harbor of Genoa adds that Admiral Nelson afterwards carried off another French vessel in full view of the Genoese batteries.[2]

[1] Cussy, Phases et Causes Célèbres du Droit Maritime, Tom. II. pp. 70, 71.

[2] Ibid., Tom. II. p. 71.

7. Another instance appears, where Admiral Nelson, in 1798, entered the neutral port of Leghorn, and seized a fleet of Genoese ships with rich cargoes. The author who records this outrage makes it "yet otherwise culpable on account of the high position of the personage, who, without respect for the independence and dignity of a friendly and neutral nation, assumed the moral responsibility of it."[1]

8. The same lawlessness governing British commanders in Leghorn and Genoa appeared also this side of the Atlantic. In August, 1795, an audacious attempt was made by the British ship-of-war Africa to seize the French minister, M. Fauchet, when on his way from New York to Newport, on board the sloop Peggy, within the waters of the United States. The sloop was boarded at the entrance of Newport harbor, and within two miles of the light-house, and the trunks of the minister were overhauled; but he had already left at an intermediate port, so that the trespassers were disappointed. M. Fauchet, in a communication to his successor, M. Adet, says: "I shall express to you but one afflicting sentiment, which is, that in a free State, with a government in which England has just acquired a friend, there is no safety for myself or my papers; for, in a word, as it was from *a public packet-boat in a neutral port* that I was to have been carried off, there is no reason why I should not be taken on the highway or in an inn, if it could be done with impunity." Our Government vainly endeavored to obtain reparation from Great Britain for this outrage, while France, on her part, mentioned the "impunity" of its authors among her causes of complaint against us. It is only recently that the facts

[1] Cussy, Phases et Causes Célèbres du Droit Maritime, Tom. II. p. 70.

of this remarkable case have appeared in a document printed by order of the Senate.[1] They help swell the present testimony.

9. Taking these instances in the order of time, we come next to outrages on the coast of Norway. The British frigate Squirrel, on entering the Norwegian port of Oster-Risoer, in 1801, then belonging to Denmark, seized a Swedish ship, and put its pilot in irons. Then coming to anchor, it deliberately captured three other Swedish vessels, and, sending on shore, kidnapped several pilots. Two or three days afterwards, a boat from another British man-of-war, the cutter Achilles, entered the Norwegian port of Egvang, and seized a French prize at anchor there, while the cutter's crew fired upon a bark having on board peaceable inhabitants, wounding one of them. The Danish Government promptly demanded reparation for these accumulated outrages, and especially the restitution of the vessels. The British minister, Lord Hawkesbury, at once declared that the guilty individuals should receive the strongest marks of disapprobation from his Government, *but that, with regard to the restitution of the vessels, it was impossible for him, in the existing circumstances of the two countries, to enter into any explanation,* — that, if the present misunderstanding should be amicably adjusted, "these cases would naturally be carried, without loss of time, *before the regular and impartial tribunals* established for the decision of such causes, according to principles of justice and the Law of Nations." The Danish minister at once replied, that his sovereign would never consent that the open violation of his ports and his territory should become,

[1] Executive Documents, 37th Cong. 3d Sess., Senate, No. 4.

under any pretext, the subject of deliberation and decision in any tribunals whatever, — that his sovereign and territorial rights were assured, and he would not abandon them. Lord Hawkesbury was moved, in reply, to disapprove the conduct of the British officers, *and to order the restitution of the Swedish vessels captured in the port of Oster-Risoer.* At the very moment of this "incomplete reparation," as it has been called, Great Britain was preparing her first expedition against Copenhagen.[1]

10. The same French author, who, in ardor for neutral rights, has exposed the conduct of Great Britain, mentions the instance of an English frigate, in 1803, which, after capturing a Swedish vessel in a Norwegian port, entered the neutral port of Bergen, where her commander attempted to seize a Dutch vessel and two French privateers. These three vessels were saved by crawling, with permission of the Governor, under the guns of the fortress; but the attempt was a violation of the neutral waters of Bergen, which passed without reparation.[2]

11. M. de Cussy also mentions, that, during this same year, a British man-of-war insulted a French vessel in the neutral port of Lisbon.[3]

12. The next instance was again on this side of the Atlantic, and in the neutral waters of our own coast. The French ship-of-the-line L'Impétueux, separated in a storm from the fleet to which she belonged, and much disabled, was discovered, September, 1806, by several British men-of-war off Cape Henry. The French ship

[1] Cussy, Phases et Causes Célèbres, Tom. II. pp. 222 – 224.
[2] Ibid., p. 238.
[3] Ibid., p. 240.

turned her head to the land, and was actually aground before the British ships came within cannon-shot. But, though in this disabled condition, and on the very shores of the United States, she received a British broadside. The French commander vainly protested that he was on neutral territory. His crew were taken prisoners, and his ship was burned. This act was a violation of the Law of Nations doubly noticeable, as the immunity of our coast "within cannon-shot" had been expressly recognized in the Treaty of 1794 between Great Britain and the United States. As the ship was burned, there could be no question of its restitution. But it does not appear that there was reparation of any kind, — not even apology.[1]

13. The outrage upon the frigate Chesapeake properly belongs to this list, for it was a barefaced and most insulting violation of territorial jurisdiction. This was in June, 1807, while the United States were at peace with all the world. The Chesapeake, having proceeded to sea, was followed by the British frigate Leopard, lying at Hampton Roads, which, after ranging alongside, commenced a heavy fire, until the commander of the Chesapeake felt it his duty to strike his colors and to inform the British commander that the Chesapeake was his prize. It is needless to mention the details of this unparalleled enormity, or the mingled anger and humiliation which ensued in the country, as they became known. A demand for reparation was made at once; but it was only after four years of negotiation that the terms of adjustment were mutually accepted. There was no ship to restore; but the men forcibly taken from the Chesapeake were, "as far as cir-

[1] Cussy, Phases et Causes Célèbres, Tom. II. pp. 81, 82.

cumstances would admit," returned to that frigate, then lying in the harbor of Boston.[1]

14. At the time these outrages were perpetrated on our coast, another, on a larger scale, was planned and executed in the Baltic. Denmark had been "scrupulously neutral"; but the British Government feared that its fleet at Copenhagen might in some way be appropriated by Napoleon, whose Continental supremacy had recently culminated at the Peace of Tilsit. It was determined to seize this fleet, and a naval expedition of corresponding force was directed against Copenhagen. The Danes made a brave resistance; but at last, on the 7th of September, 1807, they were compelled to capitulate. The Danish fleet was surrendered to the British admiral.[2]

15. Then came the American frigate Essex, under Captain Porter, captured by a superior British force in the neutral waters of Valparaiso. The Essex had made a very successful cruise, and become a terror to British navigation. It was important to stop her victories. The newspapers of the time assert that "an Admiralty order was issued, commanding the officers of British ships in the South Seas *not to respect any port as neutral where the Essex should be found.*" It is certain that the British commander acted in this spirit. With two frigates, the Phœbe and the Cherub, March 28, 1814, he opened fire upon the Essex, then at anchor, according to her log-book, "in nine and an half fathoms water, within half-pistol shot of the shore." After a desperate battle of two hours and a half, Cap-

[1] American State Papers, Foreign Relations, Vol. III. pp. 6, 183, 499, 500.

[2] Thiers, Histoire du Consulat et de l'Empire, Tom. VIII. Liv. 28, pp. 185–199.

tain Porter was compelled to surrender. The people glowed with admiration of his gallantry, and indignation at what was called "this glaring defiance of the clearest principle of National Law." It was said, that, "though the country had lost a ship, it had lost nothing else."[1] But here the matter ended. The ship was never restored; nor does it appear to have been the subject of reclamation, either by our Government upon Spain, or by Spain upon Great Britain. The President's message at the opening of the next Congress, while commending the gallantry of Captain Porter, does not even allude to the violation of International Law in his capture. But it will be remarked, that at this time the South American colonies were beginning to be convulsed by that long revolutionary war which closed with their independence, so that there was a practical difficulty in obtaining any remedy for this outrage. We could not apply directly to England, and neither Spain nor Chile was in condition to receive any such application. Silence on our part was the only policy. But the act is not forgotten among the precedents of British history.

16. Then came the General Armstrong, an American privateer, destroyed by a British squadron in the neutral waters of Fayal, in September, 1814. There is a dispute as to certain facts in this case. On the British side it is said that the privateer fired first and killed several men. But it is clear that the privateer was pursued and attacked under the very guns of the Portuguese fortress, and, after being abandoned by her crew, was burned by the British. As war at that

[1] Niles's Register, Vol. VI. pp. 338 – 344, 347 – 353. Porter's Journal (New York, 1822), Ch XVIII.

time existed between Great Britain and the United States, our Government was compelled to resort for reparation to Portugal, whose neutral territory had been violated. After a protracted negotiation for more than a generation, the question was submitted to the arbitration of Louis Napoleon, while President of the French Republic, who decided that nothing was due from Portugal. This was on the ground of exceptional circumstances, and among other things, that the American commander "had not applied from the beginning for the intervention of the neutral sovereign, and that, by having recourse to arms to repel an unjust aggression of which he pretended to be the object, he had himself failed to respect the neutrality of the territory of the foreign sovereign, and had thereby released that sovereign from the obligation in which he was to afford him protection by any other means than that of a pacific intervention."[1] In this case the ship was destroyed, so that there was no question of restitution. But Great Britain made no reparation of any kind.

Such are some of the seizures actually made by Great Britain, in defiance of neutral rights, during the wars against the French Revolution and against us.

17. There is another incident, belonging to the latter period, which, though not a consummated seizure, is in the nature of testimony, especially as it concerns the very port of Bahia where the Florida was taken. Commodore Bainbridge, of the Navy of the United States, after capture of the British frigate Java, left

[1] Wheaton's Elements of International Law, ed. Lawrence, note [217, p. 721. Executive Documents, 32d Cong. 2d Sess., Senate, No. 24. Cussy, Phases et Causes Célebres, Tom. II. p. 82.

Captain Lawrence in the Hornet to cruise off the port of Bahia, instructing him as follows: "You will cruise off here as long as in your judgment you may deem it necessary. . . . . Be on your guard against the arrival of the Montague, seventy-four; *and I advise you not to rely too much on the protection of the neutral port of Bahia against the* [*British*] *Admiral's influence to capture you even in port.*"[1] Captain Lawrence followed these instructions, and, though driven by the Montague into the port, at once took advantage of the night and escaped to sea, thus eluding British violence in neutral waters. The Hornet was not "gobbled up," as her capture of the Peacock shortly afterwards amply attests; but it is evident that the will was not wanting.

18. The long interval of peace after the outrages last mentioned caused a lull in British pretensions, — to be awakened by the blast of war. In 1837, Canada was disturbed by a rebellion, soon followed by the invasion of our territorial jurisdiction at Niagara. I refer to the case of the steamboat Caroline, which, while moored to the American shore, was entered in the darkness of night by a British expedition from Canada, set on fire, and pushed into the rapids to be precipitated over the cataract. Some persons on board were killed and others wounded. For this unquestionable violation of our territory there was no offer of reparation, — "no acknowledgment, no explanation, no apology," as Mr. Webster expressed it, — until, nearly five years afterwards, Lord Ashburton, on his special mission, expressed regret "that some explanation and apology was not immediately made." The amiable language

[1] Harris's Life of Bainbridge, pp. 157, 158.

of the British minister was promptly accepted by Mr. Webster, who was at the time Secretary of State, and the controversy subsided. The steamboat had been destroyed; but there was no offer to restore its value, nor was this question raised by our Government.[1]

19. The latest instance, in point of time, worth while to name in this list, is that of the Brazilian ship Santa Cruz, which, in 1850, was seized and burned, with all her lading and papers, by a British cruiser in the Brazilian waters. The excuse for the seizure was that the ship was engaged in the slave-trade, and for the burning that she was unseaworthy; but both these assertions were denied point-blank by the Brazilian Government, which branded the transaction as "Vandalism," and gave notice that it would demand indemnity for the loss of the ship. As the ship was destroyed, there was no question of restitution. But there was formal protest against what was called "a violation of every principle of the Law of Nations by acts highly derogatory to the dignity, the sovereignty, and the independence of Brazil, — a nation as sovereign and independent as Great Britain, although it may not have the power to prevent such proceedings."[2]

20. There is another instance, which, though earlier in time, I have reserved for the last, on account of the authentic declarations of an eminent British minister, bearing on the question now in issue between Brazil and the United States: I refer to the case of the French ships burnt or captured at Lagos, in 1759,

[1] Executive Documents, 25th Cong. 3d Sess., H. of R. No. 183. Webster's Works, Vol. V. p. 116; Vol. VI. pp. 261, 300.

[2] Cussy, Phases et Causes Célèbres, Tom. II. p. 370.

within the territorial jurisdiction of Portugal. A British fleet under Admiral Boscawen falling in with an inferior French fleet, the latter took refuge near the coast. What ensued is thus described in the contemporary Memoirs of Horace Walpole. "They made a running fight, but could not escape the vigilance and bravery of Boscawen. Two of their largest ships were taken; two others forced on shore and burnt, in one of which was the commander, who was wounded in both legs, and expired soon after. The action passed on the 18th of August."[1] This incident took its place among the victories of the year, which, according to the lively remark of Walpole in another place, were so numerous as to force him "to ask every morning what victory there was, for fear of missing one."[2] But this victory was followed by an unexpected drawback. Pombal, a man of genius and courage, and the greatest administrator Portugal has produced, was at the time Prime-Minister. He complained vehemently that the Portuguese territory had been violated, and demanded satisfaction of Great Britain according to the Law of Nations.[3] In Great Britain, William Pitt, afterwards Lord Chatham, was at the head of affairs, teaching his country success in war as in commerce, and filling the world with English renown. He met this question promptly. In instructions to the British minister at Lisbon, written before the Portuguese complaint had reached him, dated at Whitehall, September 12, 1759, and marked "Most secret," he says:—

[1] Memoirs of George II., Vol. II. p. 378.

[2] Letter to Sir Horace Mann, December 13, 1759: Letters of Horace Walpole, ed. Cunningham, (London, 1857,) Vol. III. p. 271.

[3] Hautefeuille, Des Droits et des Devoirs des Nations Neutres (2me édit.), Tom. I. p. 329.

"In case you shall find that any violence has actually been committed by his Majesty's ships against the immunities of the coasts of Portugal, it is the King's pleasure that you should express in the strongest terms to the Count de Oeyras [afterwards Marquis of Pombal], and to the other ministers, the extreme pain which such a most unfortunate incident must give to the King as soon as the certain knowledge of it shall reach his Majesty. . . . . At the same time, in case there has actually been a violation of territory on our part, you will take care to avail yourself of all the circumstances of extenuation, of a nature to soften the impressions which the first sense of any insult on that coast may have made. But you will be particularly attentive not to employ any favorable circumstances to justify what the Law of Nations condemns, but you will insensibly throw the same into your conversation with insinuations and address, as considerations of alleviation, which it is to be hoped may prevent all asperity between two courts so mutually well disposed to each other, and whose interests are so inseparable."

And the letter closes by declaring that

"His Majesty has nothing more really at heart than to give, as far as he can with honor, to the King of Portugal all reasonable satisfaction that one power in amity can desire from another upon an incident so totally unforeseen and without intention of offence."

Then follows this postscript: —

"P. S. Though it be sufficiently implied by the above words, *all reasonable satisfaction, as far as his Majesty can with honor*, that there are things which his Majesty could not possibly on any account comply with, I have thought it may not be improper, for your more certain guidance, ex-

pressly to signify to you that any personal mark on a great Admiral who has done so essential a service to his country, or on any one under his command, is totally inadmissible, *as well as the idea of restoring the ships of war taken.* You will therefore, in case, in your conversation with the Portuguese ministers, any suggestion pointing to either of those methods of satisfaction should be thrown out, *take especial care to say enough to shut the door entirely against any expectation of that kind*, — being at the same time particularly attentive to avoid, in the manner, everything that can carry the air of peremptoriness or harshness which may interest the delicacy of the King of Portugal. I am further to give you to understand, for your private information, that, if the circumstances of the supposed grievance should come out to be of sufficient magnitude, such is the King's strong desire to give the most public and ostensible satisfaction to the King of Portugal, that his Majesty will not, I believe, even be averse to sending an extraordinary mission on this occasion."[1]

The extraordinary embassy promised in this postscript was despatched to Lisbon; and here we have another letter of Mr. Pitt, dated at Whitehall, May 30, 1760, and marked "Most secret," where he declares anew "the King's immutable and affectionate concern for the dignity and independence of the crown of Portugal," and enjoins upon his ambassador to "forbear entering into much controversial reasoning," and to "accompany his answer with all possible gentleness and cordiality of manner, and with the most conciliating and amicable expressions." It seems that the Portuguese minister had demanded the restitution of the ships, but accompanied by "the friendly and confiden-

[1] Mahon's History of England, Vol. IV. p. 148; Appendix, pp. xxxv–xxxviii.

tial declaration *that a compliance therewith was not expected*." Mr. Pitt was anxious to avoid any such demand, as "an invidious use would not fail to be made of it by enemies, and perhaps by neutral powers."[1] From the Memoirs of Pombal we learn how the British ambassador acquitted himself.

"The King of England sent an ambassador extraordinary to Lisbon to give the satisfaction which was demanded. It was Lord Kinnoul who was charged with it, and who acquitted himself of this commission as the Count de Oeyras [Marquis of Pombal] required. This lord declared openly and in full audience, composed of the foreign ministers, that the English officers who burnt the French vessels on the coast of Lagos were reprehensible, and that on this account the King, his master, sent him to Lisbon, in order to testify that he had no part in it, and that it was contrary to his orders that they had committed that act of hostility for which he made reparation."[2]

The ships were not restored, nor was there any indemnity. But the case did not end here. In 1762 France declared war against Portugal, and in its declaration made the failure to obtain restoration of these ships one of the causes of war. These are the words: —

"Every one knows the utmost and violent attack made by the English in 1759 on some of the [French] King's ships under the cannon of the Portuguese forts at Lagos. His Majesty demanded of the Most Faithful King to procure him restitution of those ships; but that Prince's ministers, in contempt of what was due to the rules of justice, the laws of the sea, the sovereignty and territory of their master (all which were indecently violated by the most

[1] Mahon, History of England, Vol. IV., Appendix, pp. xxxvii – xli.
[2] Desoteux, Mémoires sur l'Administration de Pombal, Tom. II. p. 13.

scandalous infraction of the rights of sovereigns and of nations), in answer to the repeated requisitions of the King's ambassador on this head, made only vague speeches, with an air of indifference that bordered on derision."[1]

Thus, while Great Britain was saved from the restitution of the ships, Portugal was compelled to suffer.

Such are historic precedents furnished by Great Britain to illustrate the case of the Florida. In face of this long array, it is difficult to see how British critics or British ministers can venture to reproach us.

From this review it appears, that, where ships have been captured in neutral waters, their restitution was at least on one occasion positively refused by a British minister of commanding authority, while on other occasions it was avoided from destruction of the ships. If the American commander who undertook this business at Bahia had done it completely, there would be little difficulty now. There were fire and water both at his service. He might have burned the Florida or scuttled her at once, and his offence would have been no greater than now, while, according to the precedents, his Government would have been relieved from embarrassment.

But there are peculiar circumstances which distinguish this instance from every other. They may be mentioned under two heads: I shall only allude to them.

First. The Florida was illegitimate and piratical in origin and conduct, being little more than a lawless gypsy of the sea,—born contrary to the Law of Nations, and living in constant defiance of that law.

[1] Annual Register, 1762, p. [220.

Secondly. The Florida pretended to belong to a Rebel combination of slave-masters, now engaged in rebellion for the sake of Slavery. Though certain foreign powers, including Brazil, have conceded to this Rebel combination what are called "belligerent rights," yet the extent of this concession is undecided. Of course, it is much less than a recognition of national independence. Every presumption must be against such a Rebel combination, having such an object. The indecent haste with which "belligerent rights" were originally conceded cannot be forgotten now; nor can we neglect the well-founded argument, that, in the absence of prize courts belonging to the pretended power, any such concession *on the ocean* was flagrantly unjust, and, when we consider its wide-spread consequences, to be reprehended always by our Government, as it must be by impartial history. Assuming that the restitution of a ship belonging to an independent power, as to France or England, might be properly required, it does not follow that such restitution should be required in a case like the present, where the pretended owner is not an independent power, and where the ship was lawless in origin and conduct, — or, in other words, that Brazil should expect the United States to restore the Florida, that it might be handed over again to the support of a slaveholding Rebellion and to burn more ships.

I call attention to these considerations without expressing any final opinion. The case of Koszta, forcibly taken by an American frigate from an Austrian ship-of-war in the territorial waters of Turkey, shows how the conduct of governments is sometimes incon-

sistent with strict law. An explanation and apology were promptly offered to Turkey, whose neutrality had been violated; but this was all. There was no offer on our part to surrender Koszta; nor was there any demand by Turkey for his restitution. But the present case is stronger than that of Koszta.

It is well understood that the seizure of the Florida was wrong only with respect to Brazil, and not with respect to the Rebel enemy. There can be no demand, therefore, unless Brazil steps forward. Whatever is done must be in her name and at her instance. The enlightened Emperor of Brazil is of the royal house of Braganza, which reigned in Portugal when her great minister, Pombal, forbore to press the restitution of ships captured by the British in Portuguese waters. Here is a precedent of his own family, completely applicable. I venture to add that he would do an inconsiderate and unfriendly act, if he should press the restitution of a ship obnoxious not only as a public enemy, but as the piratical agent of a wicked Rebellion. Even admitting that the capture was null by the Law of Nations, yet the nature of the reparation to be demanded rests absolutely in the discretion of Brazil, and in this age no power can be justified in any exercise of discretion adverse to human freedom.

AMERICANUS.

The article was answered by an able writer in the *Advertiser* of December 13th, who assumed that Mr. Sumner was the apologist of seizures in neutral waters. It was also severely criticized by Professor Goldwin Smith, then travelling among us, in a letter which was given to the newspapers. Mr. Sumner, whose special object was to anticipate British criticism and to smooth the way with Brazil, said nothing until the case was understood to be settled, when he reappeared in the *Advertiser* of January 17, 1865.

SUPPLEMENT.

THE recent correspondence between Mr. Seward and the Brazilian Chargé d'Affaires at Washington seems to bring the case of the Florida to a close. Our Government has distinctly recognized the inviolability of territorial sovereignty, and made reparation for the original act of violence, so much discussed. The vessel itself, out of which the question arose, was no longer in existence; so that the only important point not already settled by principle and precedent was eliminated from the case. There was no vessel to be claimed on the one side or refused on the other, and nothing was said of damages on account of its loss. Of course, had the Florida belonged to Brazil, any reparation would have been incomplete which did not embrace the vessel or its value.

But Mr. Seward has been careful to exclude the assumption that the Rebels have belligerent rights on the ocean, and also the other assumption that the Florida was anything but a pirate. It is clear that the position taken on these two points must have influenced any decision with regard to the vessel itself, or damages on account of its loss.

As the case is now settled, it is unnecessary to consider objections adduced against the view presented by me in the "Advertiser" some weeks ago. What is now certain was then uncertain. The Government has spoken, and the country accepts the result. But it may not be unprofitable to return for one moment to the original discussion.

My object at that time was to furnish materials for final judgment, and especially to repel British objurgations which befogged the whole question. It was important that our national conduct should be determined calmly, according to the best principles, and with perfect knowledge of the past. But it is difficult to deal with this or any kindred question without repairing to British history. There are precedents to be shunned as well as to be followed, and both should be studied. It is strange that such an attempt should have been misunderstood. Perhaps it is stranger still that anybody should have insisted on our humble submission to the most opprobrious epithets, without reminding the objurgators of the history of their own country, bristling with incidents *having in them all that was indefensible in the Florida case without any of its exceptional circumstances.* A Roman poet exclaims:—

"Quis tulerit Gracchos de seditione querentes?" [1]

And another authority, which will not be questioned, expressly enjoins on the censor to extract the beam from his own eye before he complains of the mote in the eye of another.

In the excess of dissent from what I said, it was even suggested that the vessel should be surrendered to Brazil,—of course as trustee of Rebel Slavery. But this was a very hasty suggestion, forgetting the piratical origin of the vessel, and forgetting the piratical slavemonger character of its pretended owners, having no *ocean* rights. Admitting the inviolability of neutral waters, it does not follow that such a vessel could be claimed, or, if Brazil were so ill-advised as to make

[1] Juvenal, Sat. II. 24.

such a claim, that our Government could hearken to it. It was because I saw this clearly that I sought to set up a breakwater against such claim, and to prepare public opinion on the subject. It is noble in a nation to acknowledge wrong; but it is weakness to sacrifice a great cause.

The Statute of Limitations has been set up against some of the historic instances adduced, and the very recent date of the Congress of Paris, at the close of the Crimean War in 1856, is declared to fix the line of demarcation, marking an altered policy in Great Britain. As a lover of peace and a student of International Law, anxious for its advancement, — yielding to nobody in this regard, — I wish that such an alteration could be shown. Joyfully should I welcome it, as one of the signs of a new order of ages. Unhappily, it cannot be shown, and I feel sure that it can be brought about only by a frank exhibition of transactions demonstrating its necessity. Truth is illustrated by error, health is maintained by knowledge of disease, and crime itself is made repulsive by bringing its perpetrators to judgment.

It is an old adage of the law, that no statute of limitations runs against the sovereign, — *Nullum tempus occurrit regi.* This, of course, is for the protection of his interests. But, assuming that such a statute may be pleaded against British responsibility for historic precedents more than eight years old, there is no question with regard to what has occurred since. Here the responsibility is admitted. Now, confining ourselves to the brief period since the Crimean Peace, there are instances identical in character with those which occurred previously; and these are the more

remarkable as Great Britain had not the apology of war to disturb her equanimity.

A well-informed person, writing from Berlin, furnishes the following instance, which occurred as late as 1860. "Two British men-of-war took, or at least threatened to take, the Paraguayan war-steamer Tacuaril, in the port of Buenos Ayres. They laid themselves on each side of the Paraguayan war-steamer, in order to enforce a claim which proved afterwards to be fallacious." The writer adds, that "this case, if looked into closely, will probably serve as a counter argument, should England have anything to say on the Florida-Bahia affair." True enough; and such is the recent judgment of a German publicist.

There is also that other historic instance which has among its incidents the suspension of diplomatic relations between Brazil and Great Britain. It began with a demand by the latter power for reparation on account of a vessel pillaged after shipwreck on the coast of Brazil, in June, 1861. This was complicated soon after by a quarrel between certain officers of a British frigate in the harbor of Rio Janeiro and a sentry on shore, which ended in taking the officers into custody. The British minister demanded reparation for these two alleged wrongs; and the British admiral, who was at hand, seized five Brazilian merchant-vessels in the harbor of Rio Janeiro, declaring that he would not release them until £6,500 had been paid on account of the pillaged vessel, and satisfaction afforded for the detention of the officers. Thus, in time of peace, without any declaration of war, the British admiral performed an act of war, like that in the case of the Florida, but without the apology of the captors of the latter vessel. In short,

he undertook, within the territorial jurisdiction of Brazil, to seize, not one vessel, but five vessels,—and all these innocent, neither piratical in origin nor belonging to people without *ocean* rights. Brazil, succumbing to superior force, paid the money demanded, and referred the question of reparation in the case of the officers to the arbitration of King Leopold of Belgium, who has since rendered judgment for the weaker power. The question of responsibility for the five innocent vessels seized within the territorial jurisdiction of Brazil was left unsettled. The mild and accomplished minister of Brazil in London, M. Carvalho Moreira, made a reclamation on this account, in a careful note, dated May 5, 1863, where he submitted, that "the English Government should express its regret at the acts which accompanied the reprisals, and declare that it had no intention to offend the dignity or to violate the territorial sovereignty of the empire," and that it should consent to refer the question of damages to arbitration. Earl Russell declining to reopen any part of the questions between the two Governments, or to enter into any explanations, the Brazilian minister at once demanded his passports and left London. This case will be found at length in an authentic publication, which has only recently appeared.[1] I leave it, simply quoting from the work these pertinent words: "The question was with regard to the reparation and compensation which Brazil demanded from England for the seizure of her merchant-vessels and for the violation of her territorial waters. . . . . It was, unhappily, easy to foresee

[1] Annuaire des Deux Mondes, 1862-63, pp. 920-926. See also Parliamentary Papers for 1863, Vol. LXXIII., where Earl Russell's note is without an offensive clause which appears in the French authority.

the issue of this question, — England being always more disposed to demand reparation and indemnities than to accord them."[1] Such is the recent judgment of a French publicist.

There is another case, which has not yet found its way into the books, nor did it occur after the Crimean War; but it is so very recent, and so curious, that I venture to adduce it. I am indebted for it to the Hon. John B. Alley, one of our Representatives in Congress, to whom it was communicated by one of his constituents.[2] The bark Home, of Boston, was on her way from Calcutta to Boston, when, on or about August 22, 1849, she fell in with a vessel, first supposed to be a pirate, but at last proved to be the Polka, prize to the British steamer Sharpshooter, with the crew in a starving condition. The prize-master, on coming aboard, said that the prize was taken in Port Macahé, near Cape Frio, in Brazil, for being engaged in the slave-trade; that, to escape the fire of the fort, which opened on the captors, they slipped the cable, and cut adrift the boat which was made fast astern; that at the time of the capture there was no person aboard, except a single negro; and that a midshipman with ten men was put aboard to take her to St. Helena. The famished crew were supplied by the American bark with bread, beef, water, and other small stores, for which the British Government paid, in 1852, the cost price, being all that was asked. On this case the master of the bark, in his communication to Mr. Alley, remarks: "This is another instance where a vessel was taken in a port by the British, and this in a time of profound peace;

[1] Annuaire des Deux Mondes, 1862-63, p. 925.

[2] MS. Letter of Henry A. Hopner, Lynn, December 2, 1864.

and as the fort fired on them, I presume the capture was not made by consent of the Brazilian Government." Such is the mild conclusion of an American shipmaster, who seems to see the conduct of Great Britain in the same light as it is seen by the publicist of Germany and the publicist of France.

Such instances, so recent, show how little the injunction of International Law has been regarded by Great Britain, whether before or after the Crimean War; and yet British censors have not hesitated to arraign the United States in brutal terms. I do not admit their competency to sit in judgment on us; I plead to the jurisdiction. If they would teach correct principles, they must begin by a correct example. Meanwhile the abuses for which Great Britain is responsible cannot be forgotten by those who sincerely desire a new era in International Law. I say this in no spirit of reproach or controversy, but simply to serve the cause of my country and of truth.

AMERICANUS.

RELATIONS WITH GREAT BRITAIN:

THE ST. ALBANS RAID.

SPEECH IN THE SENATE, ON A BILL FOR FORTIFICATIONS AND BATTERIES ON THE LAKES, DECEMBER 19, 1864.

DECEMBER 19th, Mr. Doolittle, of Wisconsin, introduced a bill to enable the President to expend the sum of ten million dollars, or so much thereof as might be necessary, in his opinion, in building fortifications and floating-batteries to defend our northern frontier and the commerce of the Lakes against the attacks of piratical and hostile expeditions organized in the British provinces by the enemies of the United States; and he moved the reference of the bill to the Committee on Finance, which, at the suggestion of Mr. Sumner, he changed to the Committee on Foreign Relations. A debate ensued, involving what were called the troubles on the border, and especially the "St. Albans Raid," when a hostile expedition crossed from Canada into Vermont, and committed acts of violence in that town. Mr. Sumner said: —

MR. PRESIDENT, — The question before the Senate is simply on the reference of this bill. It is a question of the order of business.

Looking at its character, it is plain that it concerns primarily and essentially our foreign relations. This circumstance gives it a peculiar interest. If it concerned only an additional levy of troops, or the building of new forts, or a change in our commercial policy, there would be no question with regard to its reference, nor would the Senator from Maryland [Mr. REVERDY JOHNSON] have followed it by remarks on the outrage at St.

Albans. I assume, then, that it concerns our foreign relations, and therefore, according to the usages of the Senate, should be referred to the committee having that subject in charge.

This is all I have to say on the question of reference; but the Senate will pardon me, if I glance for one moment at the outrage to which the Senator referred. Only a few weeks ago, the village of St. Albans, in Vermont, was disturbed by a band of murderers, highwaymen, house-breakers, horse-thieves, and bank-robbers, from Canada. After breaking open the banks and obtaining a certain amount of spoil, attended by the murder of a citizen, they succeeded in making their way back to Canada, where they declared themselves agents of the Rebel Government. Such are the main facts. Now, Mr. President, does any one suppose that these agents of the Rebel Government were moved to this criminal enterprise merely by considerations of plunder? — that they risked life and everything merely to rob a bank? No such thing. Their object was much higher and more comprehensive. It was to embroil the Government of the United States with the Government of Great Britain. I cannot doubt that such was their object. To my mind it is plain as noonday.

These agents, or rather the men behind who set them on, knew the sensitiveness of our people, and how naturally they would be aroused against the foreign country where the enterprise had its origin. They saw that excitement, passion, anger on our part were inevitable, that out of these some complication or collision might ensue, and that any such complication or collision must necessarily help the Rebellion more than a victory on the field of battle. All this they saw, and acted ac-

cordingly. The whole proceeding was a trap in which to catch the Government of our country. It was hoped that in this way the Rebellion might gain that powerful British intervention which would restore its failing fortunes.

For myself, Sir, I am determined not to be caught in any such trap. There are many things Great Britain has done, since the outbreak of our Rebellion, which to my mind are most unfriendly; but I am unwilling that there should be anything on our side to furnish seeming apology for that foreign intervention so constantly menaced, and originally foreshadowed in the most hasty and utterly unjustifiable concession of ocean belligerence to Rebel Slavemongers who had not a single port or prize court. Nobody sees the wrongs we have suffered more clearly than I do; but I see other wrongs also. While never ceasing to claim all our just rights, and reminding this power always of duties plainly neglected, I cannot forget that we are engaged in a war for the suppression of a long-continued and most virulent Rebellion, which has thus far tasked our best energies. To this work let us dedicate ourselves, without arousing another enemy, through whose alliance the Rebellion may be encouraged and strengthened. Let us put down the Rebellion. Do this, and we shall do everything.

Meanwhile I trust the Senate will not be moved by passion into hasty action on any of the measures before it, but that each will be considered carefully and calmly on its merits, according to the usage of this body. This surely is the dictate of prudence, and I cannot doubt that it is the dictate of patriotism also.

Washington, in his Farewell Address, warns against

"the insidious wiles of foreign influence"; but the "insidious wiles" of our Rebels, seeking to embroil us with foreign powers, are as deadly as any influence brought against us. Forewarned is forearmed. Let us be steadfast against them.

After further debate, in which Mr. Sumner considered the order of General Dix, authorizing our troops to pursue a hostile expedition into Canada, according to writers on International Law, the bill was referred to the Committee on Foreign Relations, where, with other similar measures, it was allowed to sleep.

TERMINATION OF THE CANADIAN RECIPROCITY TREATY.

SPEECHES IN THE SENATE, ON THE JOINT RESOLUTION GIVING NOTICE FOR THE TERMINATION OF THE CANADIAN RECIPROCITY TREATY, DECEMBER 21, 1864, JANUARY 11 AND 12, 1865.

A JOINT RESOLUTION passed the House of Representatives, December 13, 1864, which, after an argumentative preamble, authorized and requested the President of the United States to give the British Government the notice required by the fifth article of the Reciprocity Treaty of the 5th June, 1854, for the termination of the same; and in the Senate the same was duly referred to the Committee on Foreign Relations.

December 20, 1864, Mr. Sumner reported from the Committee the House resolution, with the following substitute as an amendment.

"JOINT RESOLUTION providing for the termination of the Reciprocity Treaty of fifth June, eighteen hundred and fifty-four, between the United States and Great Britain.

"Whereas it is provided in the Reciprocity Treaty concluded at Washington the 5th of June, 1854, between the United States, of the one part, and the United Kingdom of Great Britain and Ireland, of the other part, that this treaty 'shall remain in force for ten years from the date at which it may come into operation, and further until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same'; and whereas it appears, by a proclamation of the President of the United States, bearing date 16th March, 1855, that the treaty came into operation on that day; and whereas, further, it is no longer for the interests of the United States to continue the same in force: Therefore

"*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled*, That notice be given of the termination of the Reciprocity Treaty, according to the provision therein contained for the termination of the same; and the President of the United States is hereby charged with the communication of such notice to the Government of the United Kingdom of Great Britain and Ireland."

December 21st, the joint resolution was, on motion of Mr. Sumner, taken up for consideration, when the substitute was adopted as an amendment. The question occurring on the passage of the joint resolution as amended, Mr. Sumner said : —

MR. PRESIDENT, — I had originally intended, when this joint resolution came up, to review the whole subject, and to exhibit at length the history of the Reciprocity Treaty, and existing reasons for its termination. But, after the debate of a few days ago, and considering the apparent unanimity in the Senate, I feel unwilling to occupy time by any protracted remarks. They are not needed.

The people of the United States have been uneasy under the Reciprocity Treaty for several years, — I may almost say from its date. A feeling early showed itself that the treaty was more advantageous to Canada than to the United States, — that, in short, it was unilateral. This feeling has of late ripened into something like conviction. At the same time the exigencies of the present war, requiring so large an expenditure, make it unreasonable for us to continue a treaty by which the revenues of the country suffer. Such considerations have brought the public mind to its present position. The unamiable feelings manifested toward us by the people of Canada have had little influence on the question, unless, perhaps, they may conspire to make us look at it in the light of reason rather than of sentiment.

The subject of the fisheries is included in this treaty. But it is not doubted that before the termination of the treaty some arrangement can be made in regard to it, either by reciprocal legislation or by further negotiation.

The Committee, after careful consideration at a full meeting, was unanimous in its report. And as the Committee represents all parts of the country and all sentiments of the Senate, I have thought that perhaps there might be a similar unanimity among Senators. Therefore I forbear all further remarks, and ask for a vote.

On motion of Mr. Hale, of New Hampshire, the further consideration of the question was postponed.

January 11, 1865, it was resumed, when Mr. Hale spoke against the notice. He was followed by Mr. Sumner.

Mr. President, — The Reciprocity Treaty has a beautiful name. It suggests at once exchange, equality, equity; and it is because it was supposed to advance these ideas practically that this treaty was originally accepted by the people of the United States. If, however, it shall appear, that, while organizing an exchange, it forgets equality and equity in any essential respect, then must a modification be made in conformity with just principles.

I mean to be brief, but I hope, though brief, to make the proper conclusion apparent. It is a question for reason, and not for passion or sentiment, and in this spirit I enter upon the discussion.

The treaty may be seen under four different heads, as it concerns, first, the fisheries, — secondly, the navigation of the St. Lawrence, — thirdly, the commerce between the United States and the British provinces, — and, fourthly, the revenue of the United States.

1. The fisheries have been a source of anxiety throughout our history, even from the beginning, and

for several years previous to the Reciprocity Treaty they had been the occasion of mutual irritation, verging at times on positive outbreak. The treaty was followed by entire tranquillity, which has not been for a moment disturbed. This is a plain advantage not to be denied. But, so far as I have been able to examine official returns, I do not find any further evidence showing the value of the treaty in this connection, while opinions, even among those most interested in the fisheries, are divided. There are partisans for it in Gloucester, and partisans against it in Maine.

If the treaty related exclusively to the fisheries, I should not be willing to touch it, — although the circumstance that representatives of these interests differ with regard to its value may leave it open to debate. But the practical question remains, whether any seeming advantage in this respect is sufficient to counterbalance the disadvantage in other respects.

2. Next comes the navigation of the St. Lawrence. This plausible concession has proved to be little more than a name. It appears that during the first six years of the treaty only forty American vessels, containing 12,550 tons, passed seaward through the St. Lawrence, and during the same time only nineteen vessels, containing 5,446 tons, returned by the same open highway.[1] These are very petty amounts, when we consider the commerce on the Lakes, which in 1856 was estimated at $587,197,320,[2] or when we consider the carrying trade between the United States and the Brit-

[1] Reciprocity Treaty: Executive Documents, 36th Cong. 1st Sess., H. of R., No. 96, pp. 28, 29.

[2] Navigation of the Northern and Northwestern Lakes: Reports of House Committees, 34th Cong. 1st Sess., No. 316, p. 10.

ish provinces. Take the years 1857 – 62, and we find that during this period the shipping of the United States clearing for the British provinces was 10,707,329 tons, and the foreign shipping clearing during this same period was 7,391,399 tons, while the shipping of the United States entering at our custom-houses from the British provinces was 10,056,183 tons, and the foreign shipping entering was 6,453,520 tons.[1] I mention these things by way of contrast. In comparison with these grand movements of value, the business we have been able to do on the St. Lawrence is trivial. It need not be considered an element in the present discussion.

3. The treaty may be seen next in its bearing on the commerce between the two countries. This has increased immensely; but it is difficult to say how much of this increase is due to the treaty, and how much to the natural growth of population, and the facilities of transportation in both countries. If it could be traced exclusively or in any large measure to the treaty, it would be an element not to be disregarded. But it does not follow from the occurrence of this increase *after* the treaty that it was *on account* of the treaty. *Post hoc, ergo propter hoc,* is too loose a rule for our Government on the present occasion.

The census of the United States and of the British provinces shows an increase of population which must not be disregarded in determining the origin of this increase of commerce.

There are also the railroads, with prompt and constant means of intercommunication, which have come

[1] Reciprocity Treaty: Reports of House Committees, 38th Cong. 1st Sess., No. 39, p. 6.

into successful operation only since the treaty. It would be difficult to exaggerate the influence they have exercised in quickening and extending commerce. I cannot doubt that the railroad system of the two countries has been in itself a Reciprocity Treaty more comprehensive and equal than any written on parchment.

The extent of trade before and after the treaty is seen in a few figures.

In the three years immediately preceding the treaty the total exports to Canada and the other British provinces were $48,216,518, and the total imports were $22,588,577, — being of exports to imports in the proportion of one hundred to forty-six.

In the ten years of the treaty the total exports to Canada and the other British provinces were $256,350,931, and the total imports were $200,399,786. According to these amounts the exports were to the imports in the proportion of one hundred to seventy-eight. Taking Canada alone, we find the change in this proportion greater still. The total exports to Canada in the three years immediately preceding the treaty were $31,846,865, and the total imports were $16,589,624, being in the proportion of one hundred to fifty-two, — while the total exports to Canada alone during the ten years of the treaty were $170,371,911, and the total imports were $161,474,349, being in the proportion of one hundred to ninety-four.

I present these tables simply to lay before you the extent and nature of the change in the commerce between the two countries. I forbear embarking on the much debated inquiry as to the effect of a difference between the amount of exports and of imports, in-

volving, as it does, the most delicate question of the balance of trade. In the comparison I am making, it is not necessary to consider it. The Reciprocity Treaty cannot be maintained or overturned on any contested principle of political economy.

4. I come, in the last place, to the influence of the treaty on the revenue of our country; and here the custom-house is our principal witness. The means of determining this question are found in the authentic tables published from time to time in Reports of the Treasury, and especially in the report to Congress at this session, which I have in my hand.

Looking at these tables, we find certain unanswerable points. I begin with an estimate founded on the trade before the treaty. From this it appears, that, if no treaty had been made, and the trade had increased in the same ratio as before the treaty, Canada would have paid to the United States in the ten years of the treaty at least $16,373,880, from which she has been relieved. This sum is actually lost to the revenue of the United States. In return, Canada has given up $2,650,890, being the amount it would have collected, if no treaty had been made. This vast disproportion is to the detriment of the national revenue.

Here is another illustration, derived from the tables. During the ten years of the treaty the United States have actually paid in duties to Canada alone $16,802,962, while during this same period Canada has paid in duties to the United States the very moderate sum of $930,447. Here again is vast disproportion, to the detriment of the national revenue.

The same inequality is seen in another way. Dur-

ing the ten years of the treaty *dutiable* products of the United States have entered Canada and the other provinces to the amount of $84,347,019, while during this same period *dutiable* products of Canada and the other provinces have entered the United States only to the amount of $7,750,482. During this same period *free products* of the United States have entered Canada and the other provinces to the amount of $118,853,972, while *free products* of Canada and the other provinces have entered the United States to the amount of $178,500,184. Here, again, is vast disproportion to the detriment of the national revenue.

Add to these various results the statement of the Secretary of the Treasury, just laid on our tables, in the following words: —

"The treaty [during the eight fiscal years 1855–63] has released from duty a total sum of $42,333,257 in value of goods of Canada more than of goods the produce of the United States."[1]

This conclusion is in substantial harmony with that reached from an independent examination of the tables.

These various illustrations show that the revenue of the United States has suffered by the treaty, and that in this important particular its advantages are not shared equally by the two countries. Here, at least, it loses title to its name.

But its onerous character has become manifest in other forms since the adoption of our system of internal revenue. I need not remind the Senate of the extent to which we have gone in seeking out objects of excise, — and there are pending propositions in the same direc-

[1] Foreign and Domestic Commerce: Executive Documents, 38th Cong. 1st Sess., Senate, No. 55, p. 93.

tion, seeking new objects; but it is notorious that such taxation is always graduated with reference to the tariff on the same objects, when imported from abroad. But here the Reciprocity Treaty steps forward with imperative veto. Thus, for instance, the lumber of our country is left free from excise, though I am assured it might well bear it, simply because no countervailing tax can be imposed upon lumber from the British provinces. Had a tax of five per cent been imposed upon the lumber of our country, I am assured, by those familiar with the subject, that we should have received at least $5,000,000, — all of which is lost to our annual revenue. This is only a single illustration.

There are other ways in which the treaty and our excise system come into conflict. Practical difficulties, I am assured, have already occurred in the Bureau of Internal Revenue. This conflict is seen in the extent to which the business of the country, and even its agriculture, is taxed now. Everything is taxed. Even the farmer works now with taxed tools. These considerations, with the increased value of labor among us, must give new advantages to the productive interests of Canada as compared with ours, and tend still further to the unequal operation of the treaty. Even admitting its original equality, you cannot deny that the vicissitudes of war, in these latter days, have worked changes requiring new arrangements and adaptations.

Mr. President, such is the result of a candid inquiry into the operation of this treaty, as it concerns the fisheries, the navigation of the St. Lawrence, the commerce of the two countries, and the revenue of the United States. I have kept back nothing favorable to the

treaty that could be adequately stated in the brief space I have allowed myself, nor have I exaggerated its unequal operation.

And now the question is, Shall this condition of things be readjusted? The treaty itself, as if anticipating this exigency, furnishes the opportunity, by expressly providing for its termination at the expiration of ten years, on notice of one year from either party. Great Britain is free to give this notice; so are the United States. Considering the present state of the country, it would seem improvident not to give the notice. We must husband our resources; nor can a foreign Government justly expect us to continue a treaty which is a drain upon our revenue. We are turning in all directions for subjects of taxation. Our own people are contributing largely in every way. Commerce, manufactures in every form, come to the assistance of the country. I know no reason why the large amounts enfranchised by this treaty should enjoy the immunity thus far conceded. An inequality which in ordinary times might escape observation becomes too apparent in the blaze of present responsibilities.

Something has been said about accompanying the proposed notice with instructions to negotiate a new treaty. This is unnecessary. A new treaty may not be advisable. It is possible that the whole matter may be settled by Congress under general laws. At all events, there is a full year from the 16th of March next in which to provide a substitute, either by diplomacy or by legislation. And this remark is applicable to the fisheries, as well as to every other interest touched by the treaty. I cannot doubt that the two contracting parties will approach the whole business in the deter-

mination to settle it on the permanent foundations of justice and equity; but the first step in this direction is the notice to terminate the existing treaty.

In the debate which ensued, Mr. Sherman, of Ohio, Mr. Collamer, of Vermont, Mr. Morrill, of Maine, Mr. Chandler, of Michigan, Mr. Foot, of Vermont, Mr. Doolittle, of Wisconsin, Mr. Farwell, of Maine, Mr. Conness, of California, Mr. Wilson, of Massachusetts, Mr. Cowan, of Pennsylvania, Mr. Riddle, of Delaware, and Mr. Richardson, of Illinois, spoke in favor of the notice; Mr. Ramsey, of Minnesota, Mr. Howe, of Wisconsin, Mr. Hale, of New Hampshire, and Mr. Hendricks, of Indiana, spoke against it.

January 12th, Mr. Sumner spoke again.

Mr. President, — The proposition to terminate the Reciprocity Treaty has been mystified in various ways. There has been mystification because it came from the Committee on Foreign Relations, as if that committee, to which are referred all treaties and questions with foreign powers, was not the proper committee to consider it, according to the usages and traditions of the Senate. Pray, what other committee could so justly deal with it?

There has also been illusiveness in argument, by accumulation of statistics and figures without end. We have been treated to calculations, showing the increase of commerce since the treaty, and also the relative increase of exports and imports. To these calculations I am no stranger; but, after careful study, I am satisfied that it is impossible to find in them any *terra firma* on which to stand. They are little better than quicksand, or a deceptive mirage.

In the remarks which I submitted to the Senate yesterday I declined to dwell on these calculations, for I saw, that, while involving large amounts, they were un-

certain, inconclusive, and inapplicable. With one theory of political economy they seemed to point one way, and with another to point another way. If, for instance, you accept the early theory that commerce is disadvantageous where imports exceed exports, they tell against the treaty; but if you accept the opposite theory of later writers, they tell the other way. All this assumes that they are applicable. But nobody is able to show that the general increase of commerce since the treaty has been caused by the treaty. Other agencies have had their influence; and it is difficult to say what is due to them, and what to the treaty.

In this uncertainty, I prefer to rest the proposition on the simple ground that the national revenue is impaired by this treaty. Authentic figures place this beyond controversy.

I forbear now all details, and content myself with stating the indubitable conclusion. The national revenue is impaired in two ways: first, at the custom-house on our frontier, which, under the operation of the treaty, yields little or nothing, when it might yield much; and, secondly, it is impaired through the check and embarrassment the treaty causes in our internal taxation. There is failure of duties and of excise. It is not enough to say that there is a countervailing advantage in the increase of our commerce. The conclusion is none the less exact, that the national revenue is impaired. And the question is distinctly presented, whether, at this critical moment, in a period of war, when the whole country in its wealth and labor is contributing to the support of Government, any good reason can be assigned why the commerce of Canada should be exempt from contribution. Commerce else-

where, manufactures, business, income, tea, coffee, books, all pay tribute. The tax-gatherer is everywhere except on the Canadian frontier. At home there is not an interest, hardly a sentiment, free from taxation. Surely there is nothing in the recent conduct of Canadians to make us treat them better than we treat ourselves.

There is another consideration which is decisive, even if others fail. In view of existing Public Opinion, and considering the criticisms of the treaty, it is important that our relations with Canada should be carefully revised in the light of experience. The treaty, in authorizing its termination at the end of ten years, has anticipated this very exigency. But such revision cannot be made advantageously without the proposed notice. In the case of a lease, with a right to terminate it at the end of ten years on a year's notice, the landlord, if the character of the lease had been called in question, would not hesitate to give the notice, if for no other reason, that he might revise the terms anew on a footing of equality. For like reason we must give the notice to Great Britain. We must untie ourselves now, even if we would tie ourselves again for the future. The notice will leave us "master of the situation" to this extent at least, that we shall be free to act according to the requirements of the public good. Without this notice there will be no foothold for diplomacy or legislation; but the notice will be a foothold from which we may accomplish whatever is proper and just. The treaty may be reconsidered and then adopted anew, or it may be entirely changed, and we shall have a year for this purpose, — so that, when the Old expires, the New may begin.

The joint resolution directing the notice was adopted in the Senate, — Yeas 33, Nays 8, — and was at once adopted by the House of Representatives, and approved by the President January 18, 1865. It was then communicated by Mr. Seward to Mr. Adams, our minister at London, who, under date of March 17th, addressed a note to Earl Russell, "giving formal notice of the termination of the Reciprocity Treaty, and inclosing at the same time a certified copy of the resolution expressing the sense of both Houses of Congress on that subject." Mr. Adams adds, in his letter to Mr. Seward: "This note was delivered by the messenger of this Legation at the Foreign Office at 2 P. M., notice of which was entered by him on the envelope, and also reported to me on his return. Not long afterwards I received from his Lordship his own acknowledgment of the reception of it." [1]

[1] Mr. Adams to Mr. Seward, March 23, 1865: Papers relating to Foreign Affairs, 39th Cong. 1st Sess.: Diplomatic Correspondence, 1865-66, Part I. p. 258.

THE EMANCIPATION PROCLAMATION AND EQUAL RIGHTS.

Letter to a Public Meeting in Philadelphia, December 26, 1864.

Senate Chamber, December 26, 1864.

DEAR SIR, — It will not be in my power to be present at the celebration of the Emancipation Proclamation by the Banneker Institute. But, wherever I may be, I shall not forget this great and good deed.

That proclamation has done more than any military success to save the country. It has already saved the national character. The future historian will confess that it saved everything.

It remains for us to uphold it faithfully, so that it may not be impaired a single jot or tittle.

In the spirit of the Proclamation, and taught by its example, we must press forward in the work of justice to the colored race, until abuse and outrage have ceased, and all are equal before the law.

The astronomer, Banneker, whose honored name you bear, would be shut out of the street cars in some of our cities; but such petty meanness cannot last long.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

Charles Sumner.

The Committee, &c.

FREEDOM OF WIVES AND CHILDREN OF COLORED SOLDIERS.

Speech in the Senate, on a Joint Resolution for this Purpose, January 5, 1865.

As early as January 8, 1864, Mr. Wilson, of Massachusetts, embodied in a bill to promote enlistments a clause declaring, that, when any man or boy of African descent, owing service or labor in any State, under its laws, shall be mustered into the military or naval service of the United States, he and his mother, wife, and children shall be forever free. This bill was considered from time to time. March 18th, Mr. Sherman, of Ohio, moved to postpone the bill, "with a view that we may act upon the main proposition, the Amendment to the Constitution to abolish Slavery in the United States." Mr. Sumner replied: "The Senator speaks about acting on 'the main proposition.' The main proposition, Sir, is to strike Slavery wherever you can hit it." That session closed without final action on the question.

December 13, 1864, Mr. Wilson brought it forward again, in a joint resolution to encourage enlistments and promote the efficiency of the military and naval forces, by making free the wives and children of persons who had been or might be mustered into the service of the United States.

January 5, 1865, in the debate which ensued, Mr. Sumner said: —

MR. PRESIDENT, — Only a few days ago there was a call for three hundred thousand more troops. The country needs them, and it is the duty of Congress to supply them. To this end there must be no difficulty, impediment, or embarrassment in the way. All these must be removed. This is not all. There

must be encouragement of every kind; and such is the character of the present proposition.

There can be no delay. The country cannot wait the slow action of Constitutional Amendment, as proposed by the Senator from Wisconsin [Mr. Doolittle]. Congress must act to the extent of its power, and any neglect of power on this question would be injurious to the public interests.

All will confess the humanity of the proposition to enfranchise the families of colored persons who have borne arms for their country. All will confess the hardship of continuing them in Slavery.

But the question is asked by many, and even by the Senator from Wisconsin, What power has Congress to set the families free?

Mr. Doolittle. I did not ask that question.

Mr. Sumner. The question has been put again and again, and the purport of the speech of the Senator was in that sense. He argued that we were about to have a Constitutional Amendment which would supersede everything; that therefore this proposition was unnecessary, if not injurious. I so understood the argument of the Senator, and that it pointed directly to the question of power, — because I know the patriotism of the Senator too well to suppose, that, if in his opinion the power of Congress was beyond doubt, he would hesitate. I do not do the Senator injustice. I say, then, the question is asked, What power has Congress to set the families free? This is the single point on which I shall express an opinion.

My answer is, that Congress has précisely the same power to enfranchise the families that it has to enfran-

chise the colored soldier. The two powers are coincident, and from the same source.

It is assumed that Congress may enfranchise the colored soldier. This has been done by solemn statute, without reference to the conduct of his pretended owner. If we are asked the reason for such enfranchisement, it must be found, first, in its practical necessity, that we may secure the best service of the slaves, and, secondly, in its intrinsic justice and humanity. In brief, Government cannot be so improvident and so foolish as to seek the service of the slave at the hazard of life, without securing to him the boon of freedom. Nor, if Government were so bereft of common sense as to forego this temptation to enlistment and efficient service, can it be guilty of the unutterable meanness of using the slave in the national defence and then returning him to bondage. Therefore the slave who fights is enfranchised.

But every argument, every consideration, which pleads for the enfranchisement of the slave, pleads also for the enfranchisement of the family. There is the same practical necessity for doing it, and the same unspeakable shabbiness in not doing it.

There is no principle of law better established than this, that an acknowledged right carries with it all incidents essential to its exercise. I do not employ technical language; but I give the idea, founded in reason and the nature of things. It would be vain to confer a right or a power, if the means for its enjoyment were denied. From this simple statement the conclusion is irresistible.

In conferring upon Congress the power to create an army, the Constitution conferred therewith all the

powers essential to the exercise of the principal power. If Congress can authorize the enlistment of slaves, as it indubitably can, it may at the same time authorize their enfranchisement, and by the same reason it may authorize the enfranchisement of their families, — and all this from the necessity of the case, and to prevent an intolerable baseness.

A Scottish patriot, nearly two centuries ago, exclaimed in memorable words, which I am always glad to quote, that he would give his life to serve his country, but would not do *a base thing* to save it.[1] If there be any value in this declaration, it may be invoked, when it is deliberately argued that the National Government can create an army, and in this service can enfranchise the slave it enlists, but is impotent to enfranchise his family. I know not how we can use his right arm and ask him to shed his blood in our defence, and then hand over his wife and child to bondage. The thought is too vile. The human heart rejects the insufferable wrong.

But it is said the slave has no family. Such is the argument of Slavery. For all that he has, as well as all that he is, even wife and child, belong to another. Surely this unrighteous pretension will not be made the apology for a denial of rights. If the family of the slave be not designated by law, or by the forms of legal marriage, *then it must be ascertained by the next best evidence possible,* — that is, by cohabitation and mutual recognition as man and wife. And any uncertainty in this evidence can only be regarded as a natural incident of Slavery. As men cannot take advantage of their own wrong, so slave-masters cannot take advantage of Slav-

[1] Andrew Fletcher, of Saltoun: Preface to Political Works (Glasgow, 1749), p. viii.

ery. Any other rule would practically unite with Slavery in denying to the slave wife and child.

There is a well-known French maxim, that "it is only the first step which costs"; and here permit me to say, it is only the first stage of the argument which merits attention. Concede that the soldier may be enfranchised, and then by the same constitutional power his family may be admitted to an equal liberty. Any other conclusion would be illogical as inhuman, discreditable alike to head and heart. There is no argument, whether of reason or humanity, for the enfranchisement of the soldier, which does not plead equally for that of his family. Nay, more, — I know not how we can expect a blessing on our arms while we fail to perform this duty.

I cannot close without declaring again my opinion, that Congress at this moment is complete master of the whole subject of Slavery everywhere in the United States, even without any Constitutional Amendment. It can sweep all out of existence, precisely as it can remove any other obstruction to the national defence, and all this by virtue of a power as indisputable as the power to raise armies or to suspend the *Habeas Corpus*. Future generations will read with amazement, that a great people, when national life was assailed, hesitated to exercise a power so simple and beneficent; and this amazement will know no bounds, as they learn that Congress higgled for months on the question whether the wives and children of our colored soldiers should be admitted to freedom.

January 9th, after further debate, the joint resolution passed the Senate, — Yeas 27, Nays 10. February 22d, it passed the House of Representatives, — Yeas 74, Nays 63; and March 3d, it was approved by the President.

MASSACRE OF THE CHEYENNE INDIANS.

Remarks in the Senate, on a Joint Resolution relating thereto, January 13, 1865.

January 13th, the Senate considered a joint resolution reported by Mr. Harlan, from the Committee on Indian Affairs, in relation to the massacre of the Cheyenne Indians. It proposed to direct the Secretary of War to cause the suspension of all pay and allowances to each of the members of the Third Colorado Regiment, officers, privates, and employees, and all others engaged in the recent attack made on the Cheyenne Indians in their village near Fort Lyon, in the Territory of Colorado, under the command of Colonel Chivington, until the conduct of the colonel and the regiment, and all others engaged in that attack, should receive the approval of the Secretary of War; and he was to cause all ponies, blankets, money, jewels, furs, and other property captured from the Indians, to be seized and held for the use of the United States, or for restitution to the Indians, if it should hereafter appear that the attack was unjustifiable.

In the debate which ensued, Mr. Sumner said: —

MR. PRESIDENT, — Exceptional crimes require exceptional remedies. Here is an exceptional crime, — one of the most atrocious in the history of any country. There must be a remedy commensurate with the crime. And, Sir, the remedy, in order to be anything but a name, should be swift. It cannot wait the slow ceremony of ordinary proceedings. It must have promptitude such as can be imparted by the proposition now under consideration. I thank the Senator

from Iowa for bringing it forward. Let us vote upon it, put it on its passage, speed it on its way; for only by doing so can we wash our hands of this blood.

The resolution was adopted without a division.

THE LATE HON. EDWARD EVERETT.

TELEGRAPHIC DESPATCH TO JOINT COMMITTEE OF THE LEGISLATURE OF MASSACHUSETTS, JANUARY 16, 1865.

BOSTON, January 16, 1865.

TO HON. CHARLES SUMNER.

A Joint Committee of the Legislature invoke you to deliver a Eulogy upon Hon. Edward Everett before the State authorities at such time as meets your convenience during the session of the Legislature. Please answer at once by telegraph.

MOSES KIMBALL.

Mr. Sumner answered by telegraph as follows.

SHARING the general grief in the loss of a rare and pure patriot, I regret that public duties here seem to prevent me from uniting with the Legislature in the honors they propose to his memory. I am grateful to the Joint Committee for the opportunity they offer me of commemorating a great example of genius, learning, and eloquence, consecrated to patriotic service; but the probable session of the Senate and the exigencies of public business (which are always my first duty) make me fear that I cannot respond to their summons. I mention with hesitation, but to explain the rule which is with me obligatory, that, during my long term in the Senate, I have never left my seat for a single day, except while an invalid. Be good enough to accept my thanks and sympathies.

CHARLES SUMNER.

TERMINATION OF TREATIES BY NOTICE.

Remarks in the Senate, on a Joint Resolution to terminate the Treaty of 1817 regulating the Naval Force on the Lakes, January 18, 1865.

January 18th, the Senate considered a joint resolution passed by the House of Representatives, for the termination of the treaty between the United States and Great Britain regulating the naval force on the Lakes.

The resolution, as it was passed by the House of Representatives, recited, that the Treaty of 1817, as to the naval force upon the Lakes, was designed as a temporary arrangement only, and, although equal and just at the time it was made, has become greatly unequal through the construction by Great Britain of sundry ship-canals, — that the vast interests of commerce upon the Northwestern Lakes, and the security of cities and towns situated on their American borders, manifestly require the establishment of one or more navy-yards wherein ships may be fitted and prepared for naval warfare, — and that the United States Government, unlike that of Great Britain, is destitute of ship-canals for the transmission of gunboats from the Atlantic Ocean to the Western Lakes, — and therefore proposed to direct the President of the United States to give notice to the Government of Great Britain that it is the wish and intention of the Government of the United States to terminate the arrangement of 1817, in respect to the naval force upon the Lakes, at the end of six months from and after giving the notice.

Mr. Sumner, from the Committee on Foreign Relations, reported the following substitute.

"Joint Resolution to terminate the Treaty of 1817, regulating the Naval Force on the Lakes.

"*Whereas* the United States, of the one part, and the United Kingdom of Great Britain and Ireland, of the other part, by a treaty bearing date April, 1817, have regulated the naval force upon the Lakes, and it was further provided, that, 'if either party should hereafter be desirous of annulling this

stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice'; and whereas the peace of our frontier is now endangered by hostile expeditions against the commerce of the Lakes, and by other acts of lawless persons, which the naval force of the two countries allowed by the existing treaty may be insufficient to prevent; and whereas, further, the President of the United States has proceeded to give the notice required for the termination of the treaty by a communication which took effect on the 23d November, 1864: Therefore,

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the notice given by the President of the United States to the Government of Great Britain and Ireland to terminate the Treaty of 1817, regulating the naval force upon the Lakes, is hereby adopted and ratified, as if the same had been authorized by Congress."

The substitute was adopted, and the question was on the passage of the resolution as amended.

As appears from the amended resolution, the President had already given the notice for the termination of the treaty.

Mr. Davis, of Kentucky, opposed the resolution, on the ground that the notice to terminate a treaty can be given only by Congress, — that the President had no more power to give the notice than the Judiciary, — and that his interference with the legislative power ought to be condemned, instead of approved by adopting it.

Mr. Sumner replied, that the difference between the Senator and the Committee was of form; and he proceeded to read a communication, bearing date November 23, 1864, from Mr. Adams to Earl Russell, setting forth the grievances on our northern frontier, and giving formal notice, that, "in conformity with the treaty reservation of the right, at the expiration of six months from the date of this note the United States will deem themselves at liberty to increase the naval armament upon the Lakes, if in their judgment the condition of affairs in that quarter shall then require it." On this note was minuted: "Delivered at the Foreign Office at fifteen minutes past six o'clock, P. M." In considering the validity of the notice by the President, he referred to authorities, showing that a treaty, like a law, could be repealed only by the legislative power,[1] and argued that notice to terminate it must be given by the same power. Mr. Sumner further said: —

[1] Story, Commentaries on the Constitution, Vol. II. § 1838; Ware *v.* Hylton, 3 Dallas, R., 261. See also, *ante*, Speech on the Abrogation of Treaties, Vol. V. pp. 102, 103.

BUT the Senator from Kentucky tells us that the original defect in the notice by the President is of such a character that it cannot be cured by any subsequent ratification; and he proceeds to present what he will excuse me if I call imaginary cases, which I think could hardly occur, and are widely different from that under consideration. I express no opinion on the cases he does present, — as, for instance, if the President, during the recess of Congress, should undertake to involve the country in war. Let that case take care of itself, when it arises for judgment. The case before us is more simple, and is one with regard to which there are no private rights or interests. It is a domestic question between Congress and the President. He has given the notice. As regards the Government of Great Britain, that notice, I cannot doubt, is perfectly valid. That Government will never call it in question. For our own security, and that our precedents may conform to just principles, we now propose by formal Act of Congress to throw over this notice of the President the shield of Congressional sanction; and the question is, Can this be done? Can Congress, by an act of ratification, impart to the original notice of the President that power and character which, without subsequent ratification, it would not have? On that point I content myself with reading the authoritative words of the Supreme Court of the United States in the decisions known as the *Prize Cases*. There the Court express themselves as follows.

"Without admitting that such an act was necessary under the circumstances, it is plain, that, if the President had in any manner assumed powers which it was necessary

should have the authority or sanction of Congress, that, on the well-known principle of law, '*Omnis ratihabitio retrotrahitur et mandato æquiparatur*,' this ratification has operated to perfectly cure the defect. In the case of *Brown* v. *United States*, (8 Cranch, 131, 132, 133,) Mr. Justice Story treats of this subject, and cites numerous authorities, to which we may refer, to prove this position, and concludes: 'I am perfectly satisfied that no subject can legally commit hostilities or capture property of an enemy, when, either expressly or constructively, the sovereign has prohibited it. But suppose he does, I would ask if the sovereign may not ratify his proceedings, and thus, by a retroactive operation, give validity to them?'"[1]

All now proposed is that Congress shall ratify the notice to the British Government, and by retroactive operation give validity to it.

. . . . . .

Mr. President, if this concerned private rights, — if, according to the language of the Senator from Kentucky, there were any question of *meum* and *tuum*, — there might be force in his argument. But no private rights are involved, and there are no private individuals affected in any way by the proposed ratification of the notice already given. Therefore I put out of view that suggestion. It is, then, simply a question of power on the part of Congress, with no question of private rights.

I conclude that Congress has the power, and I put my conclusion on two distinct grounds. The first is the reason of the case, its common sense; for without this power I can imagine difficulties or embarrassments in the administration of government. I say the power

[1] 2 Black, R., 671.

must exist in Congress of ratifying, if it sees fit, certain executive acts. The second ground is judicial authority. The Supreme Court of the United States, after careful consideration in recent cases which the country knows received the amplest attention and were most fully argued, has affirmed the power of Congress to ratify an executive act which without such ratification might otherwise be invalid. But I do not content myself with referring to that single decision, recent and authoritative as it is; I recall attention also to that earlier decision which is adduced in the Prize Cases, the case of *Brown* v. *The United States*, which is well known to all lawyers as one of the best-reasoned judgments in our books, and in that case you will find the same power attributed to Congress.

Therefore, on grounds of reason and of authority, I am not permitted to doubt that Congress may exercise this power.

The resolution was adopted without a division, and communicated to Mr. Adams in a despatch of Mr. Seward, under date of February 13, 1865.[1]

[1] Diplomatic Correspondence, 1865-66, Part I. p. 164: Papers relating to Foreign Affairs, 39th Cong. 1st Sess

RETALIATION, AND TREATMENT OF PRISONERS OF WAR.

SPEECHES IN THE SENATE, ON A JOINT RESOLUTION ADVISING RETALIATION, JANUARY 24 AND 29, 1865.

JANUARY 18th, Mr. Howard, of Michigan, from the Committee on Military Affairs, reported the following joint resolution.

"JOINT RESOLUTION, advising Retaliation for the Cruel Treatment of Prisoners by the Insurgents.

"*Whereas* it has come to the knowledge of Congress that great numbers of our soldiers, who have fallen as prisoners of war into the hands of the insurgents, have been subjected to treatment unexampled for cruelty in the history of civilized war, and finding its parallels only in the conduct of savage tribes, — a treatment resulting in the death of multitudes by the slow, but designed, process of starvation, and by mortal diseases occasioned by insufficient and unhealthy food, by wanton exposure of their persons to the inclemency of the weather, and by deliberate assassination of innocent and unoffending men, and the murder in cold blood of prisoners after surrender; and whereas a continuance of these barbarities, in contempt of the laws of war, and in disregard of the remonstrances of the national authorities, has presented to us the alternative of suffering our brave soldiers thus to be destroyed, or to apply the principle of retaliation for their protection; Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That in the judgment of Congress it has become justifiable and necessary that the President should, in order to prevent the continuance and recurrence of such barbarities, and to insure the observance by the insurgents of the laws of civilized war, resort at once to measures of retaliation; that in our opinion such retaliation ought to be inflicted upon the insurgent officers now in our hands, or hereafter to fall into our hands, as prisoners; that such officers ought to be subjected to like treatment practised towards our officers or soldiers in the hands of the insurgents, in respect to quantity and quality of food, clothing, fuel, medicine, medical attendance, personal exposure, or other mode of dealing with them; that, with a view to the same ends, the insurgent prisoners in our hands

ought to be placed under the control and in the keeping of officers and men who have themselves been prisoners in the hands of the insurgents, and have thus acquired a knowledge of their mode of treating Union prisoners: that explicit instructions ought to be given to the forces having the charge of such insurgent prisoners, requiring them to carry out strictly and promptly the principles of this resolution in every case, until the President, having received satisfactory information of the abandonment by the insurgents of such barbarous practices, shall revoke or modify said instructions. Congress do not, however, intend by this resolution to limit or restrict the power of the President to the modes or principles of retaliation herein mentioned, but only to advise a resort to them as demanded by the occasion."

January 23d, Mr. Wade, of Ohio, moved to proceed with its consideration, when the following passage occurred.

MR. WADE. I move to take up Senate resolution No. 97
MR. SUMNER. What is it about?
MR. WADE. About retaliation.
MR. SUMNER. I would not go on with that to-day.
MR. WADE. You would, if you were in prison. [*Laughter.*]

The resolution was taken up and debated.

January 24th, Mr. Sumner moved the following resolutions as a substitute.

"*Resolved*, That retaliation is harsh always, even in the simplest cases, and is permissible only where, in the first place, it may be reasonably expected to effect its object, and where, in the second place, it is consistent with the usages of civilized society; and in the absence of these essential conditions, it is a useless barbarism, having no other end than vengeance, which is forbidden alike to nations and to men.

"*Resolved*, That the treatment of our officers and soldiers in Rebel prisons is cruel, savage, and heart-rending beyond precedent; that it is shocking to morals; that it is an offence against human nature itself; that it adds new guilt to the crime of the Rebellion, and constitutes an example from which history will turn with sorrow and disgust.

"*Resolved*, That any attempted imitation of Rebel barbarism in the treatment of prisoners is plainly impracticable, on account of its inconsistency with the prevailing sentiments of humanity among us; that it would be injurious at home, for it would barbarize the whole community; that it would be utterly useless, for it could not affect the cruel authors of the revolting conduct we seek to overcome; that it would be immoral, inasmuch as it proceeded from vengeance alone; that it could have no other result than to degrade the national character and the national name, and to bring down upon our country the reprobation of history; and that, being thus impracticable, useless, immoral, and degrading, it must be rejected as a measure of

retaliation, precisely as the barbarism of roasting or eating prisoners is always rejected by civilized powers.

"*Resolved*, That the United States, filled with grief and sympathy for cherished fellow-citizens who, as officers and soldiers, have become the victims of Heaven-defying outrage, hereby declare their solemn determination to end this great iniquity by ending the Rebellion of which it is the natural fruit; that, to secure this humane and righteous consummation, they pledge anew their best energies and the resources of the whole people; and they call upon all to bear witness that in this necessary warfare with barbarism they renounce all vengeance and every evil example, and plant themselves firmly on the sacred landmarks of Christian civilization, under the protection of that God who is present with every prisoner, and enables heroic souls to suffer for their country."

Mr. Sumner addressed the Senate in support of his resolutions. After analyzing the resolution of the Committee, and exhibiting its character, he proceeded: —

NOW, Sir, I believe that the Senate will not venture, in this age of Christian light, under any inducement, under any provocation, to counsel the Executive Government to enter into such open competition with barbarism. Sir, the thing is impossible; it must not be entertained. We cannot be cruel, or barbarous, or savage, because the Rebels we now meet in warfare are cruel, barbarous, and savage. We cannot imitate the detested example. We find no precedent for such retaliation in our own history nor in the history of other nations. We find no precedent, I say, in our own history. This question was one of the earliest presented to General Washington after taking command of the American forces at Cambridge. From his headquarters there, under date of August 11, 1775, he addressed a letter to General Gage, commander of the British forces in Boston, which, as I believe, contains the full extent to which a nation can honorably go; and I must say, that, as I read it, I felt new pride in

that commander who thus early in the discharge of his great duties showed such insight into their proper limits and responsibilities. Addressing General Gage, he said: —

"Sir, — I understand that the officers engaged in the cause of Liberty and their country, who by the fortune of war have fallen into your hands, have been thrown indiscriminately into a common jail appropriated for felons; that no consideration has been had for those of the most respectable rank, when languishing with wounds and sickness; and that some have been even amputated in this unworthy situation."

Then, reminding the British commander of the cause in which he was engaged, Washington continued: —

"My duty now makes it necessary to apprise you that for the future I shall regulate all my conduct towards those gentlemen who are or may be in our possession exactly by the rule you shall observe towards those of ours now in your custody. If severity and hardship mark the line of your conduct, painful as it may be to me, your prisoners will feel its effects; but if kindness and humanity are shown to ours, I shall with pleasure consider those in our hands only as unfortunate, and they shall receive from me that treatment to which the unfortunate are ever entitled."[1]

Senators about me say, "That is sound." I am glad they say so; and if they can find in this correspondence any sanction of the savage system now inaugurated in Rebel prisons, let them point it out. The correspondence has its own limitations in the statement of facts on which it proceeds, which you will please observe. Prisoners had been thrown indiscriminately into a com-

[1] Writings, ed. Sparks, Vol. III. pp. 59, 60.

mon jail for felons, and with no consideration for those of the most respectable rank, even when languishing with wounds and sickness; and some of them had limbs amputated in this unworthy situation. But there is, Sir, no such painful suggestion as that in our resolution: they had not "been subjected to treatment unexampled for cruelty in the history of civilized war, and finding its parallels only in the conduct of savage tribes, — a treatment resulting in the death of multitudes by the slow, but designed, process of starvation": no such thing appears in the case; and the judgment of Washington was applied strictly to the facts before him.

This is not all. Search the history of our country, and you find that the practice is fixed, while the rule has received an accuracy of statement from which there can be no escape. I have before me the words of Chancellor Kent, in his valuable Commentaries: —

"Instances of resolutions to retaliate on innocent prisoners of war occurred in this country during the Revolutionary War, as well as during the War of 1812; but there was no instance in which retaliation, beyond the measure of severe confinement, took place in respect to prisoners of war."[1]

There you have the authoritative testimony of that great expounder of our history and of our jurisprudence, the late Chancellor Kent. I add also the testimony of another American writer, whom I have quoted more than once in this Chamber, General Halleck, who, in his work on International Law, thus expresses himself: —

"Retaliation should be limited to such punishments as may be requisite for our own safety and the good of society;

[1] Commentaries on American Law, Vol. I. p. 94.

beyond this it cannot be justified. We have no right to mutilate the ambassador of a barbarous power because his sovereign has treated our ambassador in that manner, nor to put prisoners and hostages to death, and to destroy private property, merely because our enemy has done this to us; for no individual is justly chargeable with the guilt of a personal crime for the acts of the community of which he is a member."[1]

I said, Sir, the practice proposed was without precedent in the history of other nations. I believe that I am right. I am confident that no authentic record can be shown where such savage treatment has been imitated in retaliation by a Christian power. One of the most learned writers on the Law of Nations, Vattel, dealing with this very subject, aptly puts the following question: —

"By what right will you cause the nose and ears of the ambassador of a barbarian to be cut off who shall have treated your ambassador in this manner?"[2]

That question strikes at the heart of this whole subject. What right have you to adopt any barbarous conduct because the barbarous enemy with whom you deal has set the example? This same eminent publicist, in another place, says: —

"The Roman Senate held it as a maxim, that war was to be carried on with arms, and not with poison. . . . . The Senate, and Tiberius himself, thought it not permissible to employ poison, even against a perfidious enemy, and as a kind of retortion or reprisal."[3]

[1] International Law, p. 296.
[2] Le Droit des Gens, Liv. II. ch. 18, § 339.
[3] Ibid., Liv. III. ch 8, § 155.

That statement covers the whole case. Why is it unlawful in retaliation to adopt poison? Because it is barbarous. And for the same reason it is unlawful for us to adopt starvation, to adopt all that cruel system of treatment so emphatically set forth in the preamble to this resolution. And while, Sir, I concede that by the Laws of War retaliation is permissible, yet it has its limits; and those limits, as I venture to say in the resolutions sent to the Chair as a substitute, are at least twofold: first, the retaliation must be useful, it must reasonably promise some practical result; and, in the second place, it must be in harmony with the usages of civilized nations. The retaliation now proposed is useless, for it can have no practical result; and it is not in harmony with the usages of civilized nations.

I have said that the Laws of War recognize retaliation, as appears in the recent most formal and explicit declaration to be found in the very elaborate "Instructions for the Government of Armies of the United States in the Field,"[1] prepared since this war began, under the direction of a learned commission, and by the pen of one of the ablest and most accomplished publicists of our age. I refer to Dr. Lieber, for many years professor in South Carolina College, and now professor in Columbia College, New York. In these Instructions the general law of retaliation is affirmed.

"The Law of War can no more wholly dispense with retaliation than can the Law of Nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage."[2]

[1] General Orders, Adjutant General's Office, 1863, No. 100.
[2] Instructions, Sec. I. art. 27.

Such is the general principle, officially declared. And now, Sir, I shall read the commentary of this same learned publicist on these very Instructions in a private letter which I have received from him this morning. Bear in mind, Sir, that the writer is a student of the Laws of War, that he vindicates their exercise, and that in proper cases he asserts the right of retaliation; and now allow me to present his criticism on the retaliation proposed.

"I am unqualifiedly against the retaliation resolutions concerning prisoners of war. The provision that the Southerners in our hands shall be watched over by national soldiers who have been in Southern pens is unworthy of any great people or high-minded statesman. I am not opposed to retaliation because it strikes those who are not or may not be guilty of the outrage we wish to put an end to. That is the terrible character of almost all retaliation in war. I abhor this revenge on prisoners of war, because we would sink thereby to the level of the enemy's shame and dishonor. All retaliation has some limit. If we fight with Indians who slowly roast their prisoners, we cannot roast in turn the Indians whom we may capture. And what is more, I defy Congress or Government to make the Northern people treat captured Southerners as our sons are treated by them. God be thanked, you could not do it; and if you could, how it would brutalize our own people! I feel the cruelty as keenly as any one; I grieve most bitterly that people whom we and all the world have taken to possess the common attributes of humanity, and who, after all, are our kin, have sunk so loathsomely low; I feel the hardship of seeing no immediate and direct remedy, except conquering and trampling out the vile Rebellion; but I maintain that the proposed (yet unfeasible) retaliation is not the remedy. Indeed, calmly to maintain our ground would do us in the

end far more good. Revenge is passion, and ought never to enter the sphere of public action. Passion always detracts from power.

"I believe that the ineffable cruelty practised against our men has been equalled in the history of our race by the Spanish treatment of the Indians, and by the Inquisition; but counter cruelty would not mend matters. Those who can allow such crimes would not be moved by cruelties inflicted upon their soldiers in our hands. These cruelties, therefore, would be simply revenge, not retaliation; for retaliation, as an element of the Law of War, and of Nations in general, implies the idea of thereby stopping a certain evil. But no mortal shall indulge in revenge.

"I am, indeed, against all dainty treatment of the prisoners in our hands; but, for the love of our country and the great destiny of our people, do not sink, even in single cases, to the level of our unhappy, shameless enemy."

I have read this letter, and I quote it as authority, because it is by the very pen which embodied retaliation in the Instructions to the Armies of the United States.

There is another authority which I quote. It is Phillimore, the accomplished publicist, whose elaborate work on the Law of Nations has a learning second only to that of Grotius in treating the same subject. Recording excesses of war by the French, this Englishman says: —

"At the beginning of the wars of the first French Revolution, the French general announced his intention of giving no quarter to English prisoners. The English did not retaliate, and the Laws of War upon this subject were soon restored."[1]

[1] Commentaries upon International Law, Vol. III. p. 149, Part IX. ch. 8, § 103.

In other words, the Laws of War are essentially humane, and not to be changed by any spasm of barbarism in an enemy.

A debate of several days ensued, in which Mr. Wade and Mr. Howard argued earnestly for the resolution of the Committee, and they were sustained by Mr. Gratz Brown, of Missouri, Mr. Howe, of Wisconsin, Mr. Harlan, of Iowa, Mr. Clark, of New Hampshire, Mr. Wilkinson, of Minnesota, Mr. Chandler, of Michigan, and Mr. Lane, of Indiana. On the other side were Mr. Cowan, of Pennsylvania, Mr. Hendricks, of Indiana, Mr. Henderson, of Missouri, Mr. Foster, of Connecticut, Mr. Davis, of Kentucky, Mr. Reverdy Johnson, of Maryland, Mr. Richardson, of Illinois, Mr. McDougall, of California, and Mr. Doolittle, of Wisconsin. Mr. Chandler especially condemned the position of Mr. Sumner. Here he said: —

"Sir, the Senator from Massachusetts [Mr. SUMNER] has brought in a sublimated specimen of humanitarianism that does not apply to these accursed Rebels at this time. They do not appreciate that kind of humanitarianism. I expected those men who desire that the Rebellion should succeed to oppose retaliation, and to oppose it to the bitter end; but I did not expect the Senator from Massachusetts to come in here and say that it was inexpedient to protect our suffering prisoners."

MR. SUMNER. "I have not said so."

Mr. Wilson, of Massachusetts, moved as a substitute for Mr. Sumner's amendment a simple resolution requiring the President "to appoint two commissioners to confer with the Confederate authorities, with a view of devising some practicable plan for the relief and better treatment of our prisoners of war." Mr. Clark, of New Hampshire, offered still another substitute, to be considered when in order: —

"That Congress earnestly calls the attention of the President to the condition and treatment of our prisoners of war in Rebel prisons and camps; and if, for reasons satisfactory to or controlling the Executive, they cannot be exchanged, desires that he should employ every means in his power, embracing retaliation to such a degree as may be proper and effectual, to prevent the continuance and recurrence of such barbarities, and to compel the insurgents to observe the laws of civilized warfare."

Mr. Wade, who was urging the original resolution, also gave notice of an amendment, to strike out all after the word "retaliation," and insert as follows: —

"That the executive and military authorities of the United States are hereby directed to retaliate upon the prisoners of the enemy in such manner *and kind* as shall be effective in deterring him from the perpetration in future of cruel and barbarous treatment of our soldiers."

Mr. Wade recognized the change so far as to say, "Now, if a Senator is for retaliation, if he is for the principle of it, he cannot have it in a milder form than it is there." Mr. Morrill proposed to strike out the words "and kind," and insert, instead, "in conformity to the Laws of Nations," which amendment was accepted by Mr. Wade.

January 28th, in the course of the debate, Mr. Sumner said: —

MR. PRESIDENT, — Listening with interest to this debate, and noting the various propositions to modify the original resolution of the Committee, especially that of the Senator [Mr. WADE] who has urged it so vehemently, and then again the modification even of this modification, I have been reminded of the story told by Byron[1] of Mr. Fox, afterwards British minister at Washington, and now sleeping in our Congressional burial-ground, who said of himself, after an illness in Naples, that he was "so changed that his oldest creditors would hardly know him." But no illness could work a greater change than is promised in the resolution of the Committee. In the form it is about to assume, its oldest supporter will hardly know it. The ancient legend of the ship of Theseus is revived. That famous ship, which bore the Athenian hero on his adventurous expedition to Crete, was piously preserved in the arsenal of Athens, where its decaying timbers were renewed, until, in the lapse of time, every part of the original ship had disappeared, and nothing but the name remained. Are we not witnessing a similar process, to end, I trust, in a similar disappearance?

[1] Letter to Mr. Murray, Rome, May 9, 1817: Moore's Life of Byron (London, 1847), p. 355.

In its original form, the resolution so earnestly maintained by my friends from Ohio and Michigan called for retaliation in kind,—eye for eye, tooth for tooth, cruelty for cruelty, freezing for freezing, starvation for starvation, death for death. The President was commanded to imitate Rebel barbarism in all respects, point by point. This command I felt it my duty to resist. I said nothing against retaliation according to the laws and usages of civilized nations, for that I know is one of the terrible incidents of war; but I resisted a principle which civilization disowns. The resolutions I offered as a substitute were intended as a sort of "earthwork" in support of this resistance. Perhaps they have already accomplished their purpose, inasmuch as Senators have evacuated their original position.

The question is solemn enough, and yet, as I recall the original resolution, I am reminded of an incident, more comic than serious, which occurred at Paris, while occupied by the conquering Prussians, in 1814. A Prussian soldier was brought before the Governor, charged with unmercifully beating a Frenchman, at whose house he was billeted, for not supplying a bottle of Berlin *weissbier*, which the Prussian insisted upon drinking. The Governor spoke of unreasonableness in the demand, and declared that he should be obliged to inflict severe punishment, when the Prussian soldier set up the Law of Retaliation. "I was a little boy," said he, "when a French dragoon beat my father because he was unable to find a bottle of claret in our whole village, and I then swore, that, if ever I reached France, I would beat a Frenchman for not getting me a bottle of *weissbier*. Am I not right?" This was retaliation in

kind, and retrospective in operation, like that of the original resolution.

Much as this resolution is changed, so that it no longer requires retaliation in kind, I think it might be changed still further. It is not enough, on such an occasion, and especially after avowals made in this Chamber, to say that retaliation shall be according to the principles of Public Law. Montesquieu, in his "Spirit of Laws," exhibits the uncertainty of this language. These are his words: —

"All nations have a Law of Nations, — even the Iroquois, who eat their prisoners. They send and receive ambassadors; they know the Laws of War and Peace. The evil is, that their Law of Nations is not founded on true principles."[1]

The resolution, therefore, for the sake of certainty, and to give double assurance that humanity shall not suffer, ought to be still further amended, by limiting the retaliation to the usages of civilized society. This amendment becomes the more needful since Senators argue that by the principles of public law the intolerable cruelties of the Rebellion may be retaliated.

I desire to repeat my unalterable conviction that these cruelties cannot be retaliated in kind. And here I call attention to the opinions of an illustrious citizen, only recently removed from the duties of this world. I refer to the late Edward Everett, who, in a speech at Faneuil Hall, a few days before his lamented death, thus testifies in what may be called his dying words: —

"I believe the best way in which we can retaliate upon the South for the cruel treatment of our prisoners is for

[1] De l'Esprit des Lois, Liv. I. ch. 3.

us to continue to treat their prisoners with entire humanity and all reasonable kindness, — and not only so, but to seize every opportunity like the present to go beyond this. Indeed, it is no more than our duty to treat the prisoner well. The Law of Nations requires it. The Government that refuses or neglects it does not deserve the name of civilized. Even inability is no justification. If you are yourself so exhausted that you cannot supply your prisoner with a sufficient quantity of wholesome food, you are bound, with or without exchange, to set him free. You have no more right to starve than to poison him. It will, however, be borne in mind, that, while the hard fare of our prisoners is defended by the Southern leaders, on the ground that it is as good as that of their own soldiers, at the same time they maintain that their harvests are abundant and their armies well fed. There is no merit in treating a prisoner with common humanity; it is simply infamous and wicked to treat him otherwise." [1]

You will not fail to observe how positive is his opinion on the limits of retaliation, and its character when carried beyond proper limits. And here it is proper to remark, that Mr. Everett was not only a patriot, who, in the latter trials of the Republic, devoted himself ably, purely, and successfully to the vindication and advancement of the national cause, but he was a publicist, who had profoundly studied the Law of Nations. Few in our history have understood it better. His last labors were devoted to this important subject. At the time of his death he was preparing a course of lectures upon it. Therefore, when, in the name of Public Law, he speaks against any imitation of Rebel barbarism, it is with the voice of authority.

[1] Speech in Faneuil Hall, January 9, 1865: Boston Daily Advertiser, January 10, 1865; Orations and Speeches, Vol. IV. pp. 757, 758.

From one eminent publicist I pass to another. On a former occasion I took the liberty of introducing a familiar letter from Professor Lieber, once of South Carolina, now of New York. The Senator from Michigan [Mr. HOWARD], not content with attempting an answer to the learned professor, proceeded to language with regard to him which I am sure his careful judgment cannot approve. The friend whose letter I read needs no praise as a practical writer and thinker on questions of International Law. On account of his acknowledged fitness as a master of this science, he was selected as commissioner to prepare instructions for the armies of the United States, constituting a most important chapter of the Law of Nations. Those instructions are the evidence of his ability and judgment. So long as they are followed by our Government, it will be difficult for the Senator, learned as he unquestionably is, to impeach their distinguished author. There is no Senator, not excepting the Senator from Michigan, who might not be proud to have such a monument of fame. But he is no mere theorist. It was on the field of battle, where, as a youthful soldier, he was left for dead, that he began a practical acquaintance with those Laws of War which he has done so much to expound.

And now let me read a commentary on the Law of Retaliation by this authority. I quote from an article which has already appeared in the New York "Times."

"No mawkish sentimentality has induced the writer to express his views. He has had dear friends in those Southern pens, which have become the very symbols of revolting barbarity; but he desires, for this very reason, that the subject be weighed without passion, which never counsels well, — especially without the passion of mere vengeance. Let us

bring down this general call for retaliation to practical and detailed measures. It is supposed, then, that retaliation is resolved upon; what next? The order is given to harass, starve, expose, and torture, say twenty thousand prisoners in our hands, until their bones pierce the skin, and they die idiots in their filth. Why should things be demanded which every one knows the Northern man is incapable of doing?

"If, however, by retaliation be meant that captured Rebels in our hands should be cut off from the pleasant comforts of life which Northerners subservient to the South love to extend to them, then, indeed, we fully agree. This treasonable over-kindness ought never to have been permitted. It has had the worst effect on the arrogance of our enemy; but prohibiting it is not, and cannot be called, retaliation.

"Let us not be driven from the position of manly calmness and moral dignity; and let us, on the other hand, be stern, so stern that our severity shall impress the prisoners that they are such. But let us not follow Rebel examples. It is too sickening, too vile."

Such is the testimony of Francis Lieber, in entire, but independent, harmony with the testimony of Edward Everett. As authority, nothing further can be desired. And yet the question is still debated, and grave Senators take counsel of their indignation rather than of the law.

The earnestness which has characterized this discussion attests the interest of the subject, and the interest here is only a reflection of that throughout the country. When you speak of our brave officers and soldiers suffering, languishing, pining, dying in Rebel prisons, you touch a chord which vibrates in every patriot bosom. He must be cold, sluggish, and inhuman, — so cold "that nought can warm his blood, Sir, but a fever,"[1] —

[1] Ben Jonson, The Fox, Act II Sc. 6.

who is not moved to every possible effort for their redemption.

I am happy to see that the Secretary of War is not insensible to this commanding duty. Here is an extract from a communication which he sent to the House of Representatives as late as January 21st: —

"On the 15th October the subject of exchanges was placed under the direction of Lieutenant-General Grant, with full authority to take any steps he might deem proper to effect the release and exchange of our soldiers, and of loyal persons, held as prisoners by the Rebel authorities. He was instructed that it was the desire of the President that no efforts consistent with national safety and honor should be spared to effect the prompt release of all soldiers and loyal persons in captivity to the Rebels as prisoners of war, or on any other grounds, and the subject was committed to him with full authority to act in the premises as he should deem right and proper. Under this authority the subject of exchanges has from that time continued in his charge, and such efforts have been made as he deemed proper to obtain the release of our prisoners.

"An arrangement was made for the supply of our prisoners, — the articles to be distributed under the direction of our own officers, paroled for that purpose; and the corresponding privilege was extended to the Rebel authorities. In order to afford every facility for relief, special exchanges have been offered, whenever desired on behalf of our prisoners. Such exchanges have in a few instances been permitted by the Rebel authorities, but in many others they have been denied.

"A large number of exchanges, including all the sick, has been effected within a recent period. The Commissary General of Prisoners has been directed to make a detailed report of all the exchanges that have been accomplished

since the general exchange ceased. It will be furnished to the House of Representatives as soon as completed.

"The last communication of General Grant gives reason to believe that a full and complete exchange of all prisoners will speedily be made. It also appears from his statement that weekly supplies are furnished to our prisoners, and distributed by officers of our own selection." [1]

Let these instructions be followed, and it is difficult to see what remains to be done. Exchange, retaliation, and every other agency "right and proper," are fully authorized in the discretion of the commanding general. There is nothing in the arsenal of war he may not employ. What more is needed? But this brings me again to the proposition before the Senate.

The Committee, not content with what has been done, — distrustful, perhaps, of the commanding general, — propose that Congress shall instruct the President to enter upon a system of retaliation, *where we shall imitate as precisely as possible Rebel barbarism*, and make our prisons the scenes of torments we here denounce. Why, Sir, to state the case is to answer it. The Senator from Michigan, who advocates so eloquently this *unprecedented retaliation*, attempted a description of the torments making the Rebel prisons horrible, but language failed him. After speaking of their "immeasurable criminality," and "the horrors of those scenes," which he said were "absolutely indescribable," beggaring even his affluence of language and of passion, he proceeded to ask that we should do these same things, — that we should take the lives of prisoners, even by freezing and starvation, or turn them into living skeletons, — by Act of Congress.

[1] Executive Documents, 38th Cong. 2d Sess., H. of R., No. 32, pp. 1, 2.

Sir, the Law of Retaliation, which he invokes, has its limits, and these are found in the laws of civilized society. Admit the Law of Retaliation; yet you cannot escape from its circumscription. As well escape from the planet on which we live. What civilization forbids cannot be done. Your enemy may be barbarous and cruel, but you cannot be barbarous and cruel. The rule is clear and unquestionable. Perhaps the true principle of law on this precise point was never better expressed than by one of our masters, William Shakespeare, natural jurist as well as poet, when he makes Macbeth exclaim, —

> "I dare do all that may become a man;
> Who dares do more is none."

So with us now. We are permitted to do all that may become men, but nothing more.

Surely nobody will argue that the "barbarities of Andersonville," and all those tortures we deplore, can behoove men. As well undertake, by way of retaliation, to revive the boot and thumb-screw of the Inquisition, the fires of Smithfield, "Luke's iron crown and Damien's bed of steel," or to repeat that execrable crime pictured by Dante, in one of his most admired passages, where Ugolino and his children were shut up in a tower, without food or water, and left to die slowly, cruelly, wickedly, by starvation: —

> "Thou modern Thebes! what though, as Fame hath said,
> Count Ugolino did thy forts betray?
> His sons deserved not punishment so dread." [1]

Thanks to the immortal poet who has blasted forever this sickening enormity, and rendered its imitation impossible! Thanks to that mighty voice which has given

[1] Inferno, tr. Wright, Canto XXXIII. 85 – 87.

new sanction to the mandate of Public Law. And yet in this terrible case there was retaliation, and the famished victim is revealed as ferociously gnawing the skull of his tormentor. But this was not on earth.

It is when we consider precisely the conduct of the Rebels, as represented, — when we read the stories of their atrocities, — when we call to mind the sufferings of our men in their hands, — when we look on the pictures introduced into this discussion, where photographic art has sought to exhibit the living skeletons, — when the whole scene in all its horror is before us, and our souls are filled with unutterable anguish, that we confess how difficult, how absolutely impossible, it is for us to follow this savage example. And just in proportion as this treatment of our soldiers transcends the usages of civilized society must the example be rejected. Such is the law you cannot disobey.

Nor am I to be considered indifferent to the condition of those unhappy prisoners. I do not yield to the Committee, or to any Senator, in ardor or anxiety for their protection. Whatever can be done I am ready to do. But, as American citizens, they have an interest that we should do nothing by which our country shall forfeit the great place belonging to it in the vanguard of nations. It cannot be best for them that our country should do an unworthy thing. It cannot be best for them that the national destiny should be thus darkened. Duties are in proportion to destinies, and from the very heights of our example I argue again that we cannot allow ourselves, under any passing passion or resentment, to accept a policy which history must condemn. There is not a patriot soldier who would not cry out, "Let me suffer, but save my country!"

Even if you make up your minds to do this thing, you cannot. The whole idea is impracticable. The attempt must fail, because human nature is against you. "*Nemo repente turpissimus.*" A humane and civilized people cannot suddenly become inhuman and uncivilized. Conscience, heart, soul and body, will all rise against you. From every side will be repeated that generous cry which comes to us from the darkest day of French history, when the courageous governor said to the monarch who ordered the massacre of St. Bartholomew, "Sire, I have under me good citizens and brave soldiers, but not a single executioner"; or that other later cry, when the French Convention, under the lead of Barère, decreed that all English prisoners should be shot, — "We will not shoot them," said a stout-hearted sergeant; "if the Convention takes pleasure in killing prisoners, let members kill them and eat them, like savages as they are." But the citizens and soldiers of the armies of the United States are not less generous. They, too, would cry out, "Let members of Congress do this work, if it is to be done; but do not impose it upon a fellow-man."

Mr. President, with pain I differ from valued friends whose friendship is among the treasures of my life. But I cannot help it. I cannot do otherwise. It is long since I first raised my voice in this Chamber against the "Barbarism of Slavery," and I have never ceased to denounce it in season and out of season. But the Rebellion is nothing but that very barbarism armed for battle. Plainly it is our duty to overcome it, not to imitate it. Here I stand.

January 31st, on motion of Mr. Sumner, it was still further amended so as to read, "in conformity with the laws *and usages of war among civilized* nations,"—Yeas 27, Nays 13. Mr. Sumner then withdrew his substitute, remarking that he did so because the original resolution had undergone such modification as to be in substantial harmony with the resolutions introduced by him. After other amendments, the original resolution was passed by the Senate; but it was never acted on in the House of Representatives.

This effort against Retaliation attracted attention and sympathy at the time.

Hon. Israel Washburn, formerly a Representative in Congress from Maine, being in Washington, wrote: —

"I shall not see you again before leaving the city, but I will not go without thanking you from my heart's heart for the glorious resolutions upon Retaliation which you offered in the Senate yesterday. Our country must live in the atmosphere of those resolutions, or bear no life worth having."

John B. Kettell wrote from Boston: —

"I have read in the papers of this morning a telegraphic report of the proceedings of the Senate on the resolution in relation to retaliation upon Rebel prisoners for cruel treatment to Union prisoners, and especially the resolutions offered by you as a substitute for the resolution before the Senate. Although not approving the policy of the Administration, and therefore conscientiously opposed to most of its measures, allow me to thank you from the bottom of my heart for the manly tone and lofty Christian sentiment which pervade the resolutions offered and so ably defended by yourself."

Hon. Daniel W. Alvord wrote from Greenfield, Massachusetts: —

"I wish also to thank you for your resolutions on Retaliation. I am the more impelled to do this because I think it probable that some of our friends in the State will remonstrate with you for having offered them. I have heard retaliation in kind vehemently advocated by good men in Boston. But it seems to me that it would be an indelible blot upon our fame, if, in a war with savages, we should imitate their savage cruelties. I know that retaliation by inflicting death for death may sometimes be necessary in war. But the torture of prisoners nothing can justify. If they may be tortured by hunger or cold, so they may, as well, by fire, or by the rack."

M. T. Johnstone, of the United States Coast Survey, wrote from Washington: —

"A copy of your speech on the treatment of prisoners of war has just fallen into my hands. I think the country under deep obligations to you for that speech, and for saving it from either acknowledging or practising the principle of retaliation."

The following communication from General Robert Anderson, of the Army of the United States, who commanded at Fort Sumter when South Carolina madly fired upon that national stronghold, contains the testimony of a soldier.

"New York City, January 25, 1865.

"Hon. Charles Sumner, U. S. Senate.

"Honored Sir, — The approbation of strangers is sometimes, I know, not unacceptable. I trust, therefore, that you will pardon me for giving vent to the promptings of my heart, in offering you my thanks for the noble, manly, and Christian sentiments which characterize your resolutions introduced in the Senate yesterday, in reference to the subject of Retaliation. No one would go farther than I would, to put down, with a vigorous and resolute hand, this most accursed Rebellion. But, in God's name, Sir, let it be done in such a manner that those who live after us may be able to say, that, in all this time of trial, not one act was sanctioned or permitted by our Government which was not becoming us as a civilized and Christian nation. And God will bless and prosper us only as we do so act. My earnest prayer is, that He will endue our rulers with wisdom, and soon give peace and prosperity and happiness to our bleeding land.

"With the renewal of my thanks for your having so beautifully, so ably, so nobly advocated the cause of humanity, which is the cause of Christ,

"I am, Sir, with high respect, your obedient servant,

"Robert Anderson."

In a later letter General Anderson returned to the subject : —

"The sentiments you express in your speech are such as become a Christian and a patriot. We, as a nation, are not at liberty to follow the example of men who claim to owe allegiance to a Government not recognized among nations, — the self-assumed name of which will, by God's blessing, soon sink into oblivion."

General Donaldson, of the Army of the Cumberland, and of the staff of the distinguished General Thomas, wrote from Nashville : —

"Though but slightly acquainted with Mr. Sumner, I trust he will allow me to tender my thanks as an American for his noble resolutions on the subject of Retaliation. They are greater than any speech, and such as a Howard might have written, had he lived in the days of the mighty crime."

Such were some of the voices, not only from citizens, but from the Army.

ADMISSION OF A COLORED LAWYER TO THE BAR OF THE SUPREME COURT OF THE UNITED STATES.

MOTION IN THE SUPREME COURT, FEBRUARY 1, 1865.

JOHN S. ROCK, Esq., was a colored lawyer in Boston, who, after studying medicine, accomplished himself in the law, and visited Europe. In the hope of advancing his race and of overturning an obnoxious precedent, he formed the idea of being admitted to the bar of the Supreme Court of the United States, even during the life of Chief Justice Taney; but Mr. Sumner, to whom he applied, could not encourage him, while the author of the Dred Scott decision presided over the Court. With Mr. Chase as Chief Justice it was otherwise. Before presenting him, Mr. Sumner communicated with the Chief Justice, who undertook to sound his brethren and smooth the way. After some delay he let Mr. Sumner know that the motion might be made. It seems, that, by usage of the Court, the Chief Justice acted on the admission of counsellors without consulting the rest of the bench, and it was understood that the usage would be recognized in this case.

As only a citizen could be a counsellor of the Supreme Court, and, according to the Dred Scott decision, a colored person was not a citizen, the admission of Mr. Rock was regarded by the country as tantamount to a reversal of that decision.

An informal and intimate correspondence between Mr. Sumner and the Chief Justice belongs to the history of this case.

On the receipt of a letter from Mr. Rock, saying, "We now have a great and good man for our Chief Justice, and with him I think my color will not be a bar to my admission," Mr. Sumner wrote to the Chief Justice, inclosing the letter.

"SENATE CHAMBER, 21st December, 1864.

"MY DEAR CHASE, — Please read the inclosed letter, and let me know what I shall do with regard to it.

"Mr. Rock is an estimable colored lawyer, who, as you will see, is cor-

dially recommended by Governor Andrew and others in the public service. He is one of several colored lawyers in Massachusetts, who practise in all our courts, and are always received with courtesy.

"Before I came into the Senate, now several years ago, I was counsel in a case before our Massachusetts Supreme Court,[1] where one of these colored lawyers was my associate, and I remember well the very great kindness and attention with which he was received by Chief Justice Shaw and all the bench.

"I mention these things that you may see something of Mr. Rock's title to admission to the Supreme Court of the United States.

"I know not how far the Dred Scott decision may stand in the way.

"Of course, the admission of a colored lawyer to the bar of the Supreme Court would make it difficult for any restriction on account of color to be maintained anywhere. Street cars would be open afterwards.[2]

"Ever yours,

"CHARLES SUMNER."

The following note, written in pencil, and sent to Mr. Sumner at his seat in the Senate, was the prompt answer: —

"SUPREME COURT ROOM, December 21, 1864.

"DEAR SUMNER, — I will confer with the Judges on Saturday, which is consultation day. It is not likely that any, or any serious, objection will be made.

"Yours faithfully,

"S. P. CHASE."

Not hearing from the Chief Justice, Mr. Sumner sent the following reminder: —

"*In re* John S. Rock, Counsellor at Law, Massachusetts.

"What say you?

"C. S."

"Senate Chamber, Thursday,
15th January, 1865."

This was returned with the following reply, written in pencil on the same paper: —

"Nothing at present, — except not forgotten.

"S. P. C."

Another note, written also in pencil, opened the door.

"January 23 1865.

"DEAR SUMNER, — You can make your motion for Mr. Rock's admission at any time which suits your convenience.

"Yours ever,

"S. P. CHASE."

[1] *Ante*, Vol. III. p. 51.

[2] That question was then under discussion. *Ante*, Vol. X. pp. 336, 337.

Mr. Rock, who was waiting in Boston, appeared February 1st, and was at once presented by Mr. Sumner. The few formal words which passed on this occasion are not without interest.

As soon as the judges had taken their seats, Mr. Sumner rose, and, with Mr. Rock standing by his side, said: —

May it please the Court, —

I ASK leave to present John S. Rock, Esq., a Counsellor at Law of the Supreme Court of Massachusetts, and now move that he be admitted as a Counsellor of this Court.

The Chief Justice bowed, and said: —

"Let him come forward and take the oath."

The oath was then administered by Mr. Middleton, Clerk of the Court. At the same time, on motion of Mr. Sumner, Francis V. Balch, Esq., of Boston, his private secretary, was also admitted.

This incident, marking a stage in the battle for Equal Rights, was extensively noticed at home and abroad. It occurred on the day after the final passage in the House of Representatives of the Constitutional Amendment abolishing Slavery, and the correspondent of the *Boston Journal* remarked the association of the two events.

"The Slave Power, which received its constitutional death-blow yesterday in Congress, writhes this morning on account of the admission of a colored lawyer, John S. Rock, of Boston, as a member of the bar of the Supreme Court of the United States. . . . . The rage depicted in the countenances of some of the old Hunkers present at this invasion of their citadel beggars description."

The correspondent of the *New York Tribune* announced the event as "The Dred Scott Decision buried in the Supreme Court," and then broke forth enthusiastically: —

"O augustly simple funeral *cortége!* O dead, wrapped in the cerements that the divine hand of Revolution folds its victims with, augustly exciting in your stormy birth, transcendently mischievous in your little life! — Senator Charles Sumner and Negro Lawyer John S. Rock the pall-bearers, — the room of the Supreme Court of the United States the Potter's Field, — the corpse the Dred Scott decision!

"Through the door that was too narrow to freely let out the bearers that bore Charles Sumner's inanimate form from the Senate Chamber, where he had been stricken down by the assassins of the Slave Power, Charles Sumner to-day marched back, leading a negro by the hand, and, standing upon the very spot that had been stained with his blood for demanding freedom and equality for the blacks in America, demanded of the Supreme Court of the United States to enroll among its members an African lawyer, and to license him to practise at its bar. The black man was admitted."

Then mentioning the motion of Mr. Sumner, the same correspondent says : —

"The grave to bury the Dred Scott decision was in that one sentence dug, and it yawned there, wide open, under the very eyes of some of the judges who had participated in the juridical crime against Democracy and Humanity. The assenting nod of the great head of the Chief Justice tumbled in the corse and filled up the pit, and the black counsellor of the Supreme Court got on to it and stamped it down, and smoothed the earth for his walk to the rolls of the Court.

". . . . . A few lawyers of the old *régime* looked on, stunned somewhat, but rapidly growing in wisdom, and mixing deference to destiny with their instinctive reluctance to this revolutionary intrusion."

Mr. Cobden, writing from England, also associated this event with the Constitutional Amendment. In a letter shortly before his much lamented death, he said : —

"I feel it a pleasant duty to give you my best congratulations on the recent proceedings within and without your Halls of Congress. The vote on the Amendment of the Constitution was a memorable and glorious event in your history. Another incident — that of your introduction of a colored man to the Supreme Court — was hardly less interesting. In all these proceedings at Washington *you* ought to be allowed to indulge the feelings of a triumphant general. You served as a volunteer in the forlorn hope, when the battle of Emancipation seemed a hopeless struggle. *Your* position within the Halls of Congress was very different from that of the agitators out of doors, meritorious as were their labors. I have served in both capacities, and know the difference between addressing an audience of partisans at a public meeting and a hostile parliamentary assembly. . . . . I heartily congratulate you."

Doubtless the admission of a colored lawyer to the Supreme Court helped prepare the way for admission of his race to the rights of citizenship, and especially the right to vote.

PARTICIPATION OF REBEL STATES NOT NECESSARY IN RATIFICATION OF CONSTITUTIONAL AMENDMENTS.

Declaratory Resolutions in the Senate, February 4, 1865.

Concurrent Resolutions declaring the rule in ascertaining the three fourths of the several States required in the ratification of a Constitutional Amendment.

WHEREAS Congress, by a vote of two thirds of both Houses, has proposed an Amendment to the Constitution, prohibiting Slavery throughout the United States, which, according to existing requirement of the Constitution, will be valid, to all intents and purposes, as part of the Constitution, when ratified by the Legislatures of three fourths of the several States; and

Whereas, in the present condition of the country, with certain States in arms against the National Government, it becomes necessary to determine what number of States constitutes the three fourths required by the Constitution: Therefore,

Resolved by the Senate (the House of Representatives concurring), That the rule followed in ascertaining the two thirds of both Houses proposing the Amendment to the Constitution should be followed in ascertaining the three fourths of the several States ratifying the Amendment; that, as in the first case the two thirds are founded on the simple fact of representation in the two

Houses, so in the second case the three fourths must be founded on the simple fact of representation in the Government of the country and the support thereof; and that any other rule establishes one basis for the proposition of amendment and another for its ratification, placing one on a simple fact and the other on a claim of right, while it also recognizes the power of Rebels in arms to interpose a veto upon the National Government in one of its highest functions.

Resolved, That all acts, executive and legislative, in pursuance of the Constitution, and all treaties made under the authority of the United States, are valid to all intents and purposes throughout the United States, although certain Rebel States fail to participate therein, and that the same rule is equally applicable to an Amendment of the Constitution.

Resolved, That the Amendment of the Constitution prohibiting Slavery throughout the United States will be valid to all intents and purposes as part of the Constitution, whenever ratified by three fourths of the States *de facto*, exercising the powers and prerogatives of the United States under the Constitution thereof.

Resolved, That any other rule, requiring the participation of the Rebel States, while illogical and unreasonable, is dangerous in its consequences, inasmuch as all recent Presidential proclamations, including that of Emancipation, also all recent Acts of Congress, including those creating the national debt and establishing a national currency, and also all recent treaties, including the treaty with Great Britain for the extinction of the slave-trade, have been made, enacted, or ratified, respectively, without any participation of the Rebel States.

Resolved, That any other rule must tend to postpone the great day when the prohibition of Slavery will be valid to all intents and purposes as part of the Constitution of the United States; but the rule herewith declared will assure the immediate ratification of the prohibition, and the consummation of the national desires.

On motion of Mr. Sumner, these resolutions were printed and laid on the table. Besides hastening the adoption of the Constitutional Amendment, it was hoped that they would help prepare the way for Reconstruction.

APPORTIONMENT OF REPRESENTATIVES ACCORDING TO VOTERS.

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, FEBRUARY 6, 1865.

IN the Senate, February 6, 1865, Mr. Sumner submitted the following Amendment to the Constitution, which, on his motion, was referred to the Committee on the Judiciary.

REPRESENTATIVES shall be apportioned among the several States which may be included within this Union according to the number of male citizens of age having in each State the qualifications requisite for electors of the most numerous branch of the State Legislature. The actual enumeration of such citizens shall be made by the census of the United States.

This Amendment was a first attempt to meet the new exigency from the abolition of Slavery. One of two alternatives was open: the extension of suffrage to the new-made freedmen by the action of Congress, which Mr. Sumner insisted was the just course; or the apportionment of Representatives according to voters, which would make it for the interest of a State to extend the franchise. Without one of these measures the political power of the former slave-masters would be enlarged by Emancipation.

This subject occupied much attention at the next session of Congress.

RAILROAD USURPATION IN NEW JERSEY.

SPEECH IN THE SENATE, ON A BILL TO REGULATE COMMERCE AMONG THE SEVERAL STATES, FEBRUARY 14, 1865.

APRIL 25, 1864, Mr. Sumner asked, and by unanimous consent obtained, leave to bring in the following joint resolution, which was read twice, and referred to the Committee on Military Affairs.

"A JOINT RESOLUTION to facilitate commercial, postal, and military communication among the several States.

"Whereas the Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several States, to establish post-roads, and to raise and support armies: Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That every railroad company in the United States, whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road, connections, boats, bridges, and ferries, all freight, property, mails, passengers, troops, and Government supplies, on their way from any State to any other State, and to receive compensation therefor."

May 12th, Mr. Wilson, of Massachusetts, from the Committee, reported it without amendment.

Meanwhile the House of Representatives had under consideration a bill to declare certain roads military roads and post-roads, and to regulate commerce, which was much debated, when, on motion of Mr. Wilson, of Iowa, Mr. Sumner's joint resolution, without the preamble, and with the title, "A Bill to regulate commerce among the several States," was adopted as a substitute, and the bill thus amended passed the House, — Yeas 63, Nays 58.

In the Senate the bill was elaborately discussed, especially by Mr. Reverdy Johnson, of Maryland; but its friends were never able to press it to a vote, and it expired with the session. In one of these efforts Mr. Sumner said: "There are two ways of killing a measure: one is

by voting it down; the other is by postponing it until you lose an opportunity of voting on it; and the latter is the policy of certain Senators now."

March 3, 1865, failing to obtain a vote on the bill, Mr. Sumner moved it as an amendment to the Post-Route Bill, but without success.

February 14th, while the bill was under consideration, Mr. Sumner spoke.

MR. PRESIDENT, — The question before us concerns the public convenience to a remarkable degree. But it concerns also the unity of this Republic. Look at it in its simplest form, and you will confess its importance. Look at it in its political aspect, and you will recognize how vital it is to the integrity of the Union itself. On one side we encounter a formidable Usurpation with all the pretensions of State Rights, hardly less flagrant and pernicious than those which ripened in bloody rebellion. On the other side are the simple and legitimate claims of the Union under the Constitution of the United States.

Thus stands the question at the outset: public convenience and the Union itself in its beneficent powers on the one side; public inconvenience and all the discord of intolerable State pretensions on the other side.

The proposition on its face is applicable to all the States throughout the Union, and in its vital principle concerns every lover of his country. But it cannot be disguised that the interest it has excited in the other House, and also in the Senate, must be referred to its bearing on the railroads of New Jersey. Out of this circumstance springs the ardor of opposition, — perhaps, also, something of the ardor of support. Therefore pardon me, if I glance one moment at the geo-

graphical position of this State, and its Railroad Usurpation in the name of State Rights.

Look on the map, or, better still, consult your own personal experience in the journey from Washington to New York, and you will find that New Jersey lies on the great line of travel between the two capitals of the country, political and commercial. There it is, directly in the path. It cannot be avoided, except by circuitous journey. On this single line commerce, passengers, mails, troops, all must move. In the chain of communication by which capital is bound to capital,— nay, more, by which the Union itself is bound together, — there is no single link of equal importance. Strike it out, and where are you? Your capitals will be separated, and the Union itself loosened. But the evil sure to follow, if this link were struck out, must follow also in proportionate extent from every interference with that perfect freedom of transit through New Jersey which I now ask in behalf of commerce, passengers, mails, and troops.

Such is the geographical position of New Jersey. And on this highway pernicious pretensions are set up which can be overthrown only by the power of Congress. The case is plain.

New Jersey, in the exercise of pretended State rights, has undertaken to invest the Delaware and Raritan Canal and the Camden and Amboy Railroad and Transportation Companies with unprecedented prerogatives. These are the words of the Legislature: "It shall not be lawful, at any time during the said railroad charter, to construct any other railroad or railroads in this State, without the consent of the said companies, which shall be intended or used for the transportation of passengers

or merchandise *between the cities of New York and Philadelphia*, or to compete in business with the railroad authorized by the Act to which this supplement is relative."[1] Here, in barefaced terms, is the grant of monopoly in all railroad transportation, whether of commerce, passengers, mails, or troops, between *New York*, a city *outside* of New Jersey, and *Philadelphia*, another city *outside* of New Jersey. Or, looking at this grant of monopoly again, we find, that, *while leaving the local transportation of New Jersey untouched*, it undertakes to regulate and appropriate the transportation between two great cities outside of New Jersey, constituting, from geographical position, the gates through which the whole immense movement, north and south, must pass.

If this monopoly is offensive on its face, it becomes still more offensive, when we consider the motive in which it had its origin. By confession of its supporters, it was granted in order to raise a revenue for the State out of men and business not of the State. It was an ingenious device to tax commerce, passengers, mails, and troops in transit across New Jersey, from State to State. I quote a confession from the Legislative Journal of New Jersey, as long ago as 1841, in a document by the executive committee of the coalesced railroads, represented by the Camden and Amboy Company.

"It seems plain, from the acts incorporating these companies, and the testimony of those best conversant with the history of their incorporations, that it was the policy of the State, *taking advantage of the geographical position of New Jersey*, between the two largest States and cities of the

[1] Acts of the General Assembly of New Jersey, 1831-2, p. 80.

Union, *to create a revenue by imposing a tax or transit duty upon every person who should pass on the railroad across the State* between these cities from the Delaware River to the Raritan Bay; but that it was not their design to impose any tax upon citizens of their own State for travelling between intermediate places. . . . . Here, again, the policy and intention of the State is most clearly indicated in exempting her own citizens from the operation of this system of taxation."[1]

I quote the words of another functionary, equally frank, belonging to the same railroad connection.

"The Company believe that a careful consideration of the whole matter, as well from the provisions of the charter as from a recurrence to the period when it was granted, will produce the conviction that *the transit duty was intended to be levied only on citizens of other States passing through New Jersey.*"[2]

The spirit in which this tax has been laid appears from another incident, not without interest to the Senators from New York. The Erie Railroad, so important to transportation in the great State which they represent, has been compelled, in addition to the usual tax on that part of the road in New Jersey, to pay an extra tax in the shape of "a transit duty of three cents on every passenger and two cents on every ton of goods, wares, and merchandise, *except passengers and freight transported exclusively within* this State." This imposi-

[1] Memorial of the Executive Committee of the Delaware and Raritan Canal and Camden and Amboy Railroad and Transportation Companies: Documents accompanying the Governor's Message to the Legislature of New Jersey, October, 1841: Proceedings of the General Assembly, 1841–2, pp. 29, 30.

[2] Memorial of the New Jersey Railroad and Transportation Company: Ibid., p. 32.

tion was as late as 1862, and is part of that same system which constitutes the Railroad Usurpation of New Jersey to this day.

This Usurpation becomes still more apparent in the conduct adopted toward another railroad in New Jersey. It appears that a succession of railroads has been constructed, under charters of this State, from Raritan Bay, opposite New York, to Camden, opposite Philadelphia, constituting a continuous line, suitable for transportation, across New Jersey and between the two great cities of New York and Philadelphia. The continuous line is known as the Raritan and Delaware Bay Railroad. On the breaking out of the Rebellion, when Washington was menaced by a wicked enemy, and the patriots of the land were aroused to sudden effort, the Quartermaster General of the United States directed the transportation of troops, horses, baggage, and munitions of war from New York to Philadelphia over this line. The other railroad, claiming a monopoly, filed a bill in equity, praying that the Raritan and Delaware Bay Railroad "be decreed to desist and refrain" from such transportation, and also praying "that *an account* may be taken to ascertain the amount of damages." The counsel of the monopoly openly insisted that by this transportation the State was "robbed of her ten cents a passenger," and then cried out: "I say it is no defence whatever, if they have succeeded in obtaining an order of the Secretary of War, *when we call upon them to give us the money they made by it;* and that is one of our calls. They have no right to get an order to deprive the State of New Jersey of the right of transit duty, *which is her adopted policy.*" Such was the argument of Mr. Stockton, counsel for the monopoly, No-

vember 12, 1863. The *transit duty* is vindicated as the *adopted policy* of New Jersey.

Nor is it modern in time. It may be traced to the beginning of the National Government, under the administration of Washington, when it awakened the indignant comment of Timothy Pickering, Postmaster General. This patriot citizen, in a communication to the House of Representatives, under date of February 9, 1793, and entitled "Tax on Mail Stages in New Jersey," says, "The avowed design is to increase the revenues of that State," precisely as now; and he adds, what may be repeated: "And thus the citizens of the United States have to purchase permission to travel on the highways of New Jersey." Then, calling the tax "an annual tribute," which the United States are to pay, he says: "And from the example of New Jersey they may erelong become tributary to all the States from Virginia to New Hampshire, inclusively; for so far the mail is carried in stage-wagons."[1] But our "stage-wagons" are on railroads now.

Such, Sir, are the pretensions of New Jersey to interfere with commerce, passengers, mails, and troops *from other States*, on the way, it may be, to the National Capital, even with necessary succors at a moment of national peril. Such pretensions, persistently maintained and vindicated, constitute a Usurpation, not only hostile to the public interests, but menacing to the Union itself. Here is no question of local taxation or local immunity under State laws, but an open assumption by a State to tax the commerce of the United States on the way from State to State.

[1] American State Papers, Post-Office Department, p. 15.

From the nature of the case, and according to every rule of reason, there ought to be a remedy for such a grievance. No usurping monopoly should be allowed to establish itself in any State across the national highway, and, like a baron of the Middle Ages perched in his rocky fastness, levy toll and tribute from the wayfarers of business, pleasure, or duty. The Usurpation should be overthrown. The nuisance should be abated. And, happily, the powers are ample under the National Constitution. Following unquestionable principles and authentic precedents, the Committee propose a remedy which I proceed to discuss.

The measure under consideration was originally introduced by me into the Senate. It was afterward adopted and passed by the other House as the substitute for a kindred bill pending there. Beyond the general interest which I take in the public business, this is my special reason for entering into this discussion.

The bill is arraigned as unconstitutional. But this objection is a commonplace of opposition. When all other reasons fail, then is the Constitution invoked. Such an attempt, on such an occasion, attests the weakness of the cause. It is little better than the assertion of an *alias* in a criminal case.

The entire and unimpeachable constitutionality of the present measure is apparent in certain familiar precepts of the Constitution, brought to view in the title and preamble of the measure as introduced by me, but omitted in the bill now before us. The title, as introduced by me, was, "A joint resolution to facilitate commercial, postal, and military communication among the

several States." This opens the whole constitutional question. Then came the preamble: —

"Whereas the Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several States, to establish post-roads, and to raise and support armies: Therefore, *Resolved*," &c.

In these few words three sources of power are clearly indicated, either of which is ample; but the three together constitute an overrunning fountain.

First. There is the power "to regulate commerce among the several States." Look at the Constitution and you find these identical words. From the great sensitiveness of States, this power is always exercised by Congress with peculiar caution; but it still lives to be employed by an enfranchised Government.

Asserting this power, I follow not only the text of the Constitution, but also authoritative decisions of the Supreme Court. Perhaps there is no question in our constitutional history more clearly interpreted by our greatest authority, Chief Justice Marshall. In the well-known case where the State of New York undertook to grant an exclusive right to navigate the waters of New York by vessels propelled by steam, the illustrious Chief Justice, speaking for the Court, declared the restriction illegal, because it interfered with commerce between the States, precisely as is now done by New Jersey. In his opinion commerce was something more than traffic or the transportation of property. It was also "the commercial intercourse between nations and parts of nations in all its branches"; and it embraced, by necessary inference, *all inter-State communications*, and the whole subject of intercourse between the peo-

ple of the several States. It was declared that the power of Congress over the subject was not limited by State lines, but was coextensive with commerce itself, according to the enlarged signification of the term. Here are the words of Chief Justice Marshall: —

"But in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several States. It would be a very useless power, if it could not pass those lines. . . . . Every district has a right to participate in it. The deep streams which penetrate our country in every direction pass through the interior of almost every State in the Union, and furnish the means of exercising this right. *If Congress has the power to regulate it, that power must be exercised whenever the subject exists.* If it exists within the States, if a foreign voyage may commence or terminate at a port within a State, then the power of Congress may be exercised within a State."[1]

This important decision was before railroads. It grew out of an attempt to appropriate certain navigable thoroughfares of the Union. But it is equally applicable to those other thoroughfares of the Union where the railroad is the substitute for water. According to the genius of jurisprudence, a rule once established governs all cases within the original reason on which it was founded. Therefore I conclude that the power of Congress over internal commerce by railroad is identical with that over internal commerce by water. But this decision does not stand alone.

Mr. Justice Story, a member of the Supreme Court at that time, in a later decision explained the extent of the power.

[1] Gibbons *v.* Ogden, 9 Wheaton, R., 195.

"It does not stop at the mere boundary-line of a State; nor is it confined to acts done on the water, or in the necessary course of the navigation thereof. *It extends to such acts done on land which interfere with, obstruct, or prevent the due exercise of the power to regulate commerce* and navigation with foreign nations and *among the States.*" [1]

From various cases illustrating this power I call attention to those known as the *Passenger Cases,* where the Supreme Court declared that the statutes of New York and Massachusetts, imposing taxes upon alien passengers arriving at the ports of those States, were in derogation of the Constitution. On this occasion Mr. Justice McLean said: —

"Shall passengers, admitted by Act of Congress without a tax, be taxed by a State? The supposition of such a power in a State is utterly inconsistent with a commercial power, either paramount or exclusive, in Congress." [2]

Mr. Justice Grier said, with great point: —

"To what purpose commit to Congress the power of regulating our intercourse with foreign nations and among the States, *if these regulations may be changed at the discretion of each State?* . . . . It is, therefore, not left to the discretion of each State in the Union either to refuse a right of passage to persons or property through her territory, or to exact a duty for permission to exercise it." [3]

But this is the very thing now done by New Jersey, which "exacts a duty" from passengers across the State.

[1] United States *v.* Coombs, 12 Peters, S. C. R., 78.
[2] 7 Howard, R., 400.
[3] Ibid., 462, 464.

I call attention also to the case of the Wheeling Bridge, where Congress, under peculiar circumstances, exercised this identical power. In this case the State of Pennsylvania denied the power of Virginia to authorize a bridge across the Ohio River obstructing navigation; but, under the pressure of public demand, and in the exercise of the very powers now invoked, Congress declared the Wheeling Bridge a lawful structure, anything in any State law to the contrary notwithstanding. The Supreme Court, after the passage of this Act, denied a motion to punish the owners of the bridge for contempt in rebuilding it, and affirmed that the Act declaring the Wheeling Bridge a lawful structure was within the legitimate exercise by Congress of its constitutional power to regulate commerce.[1] This very power is here invoked in a case more important and far more urgent than that of the Wheeling Bridge.

There is also another case. I refer to the Steubenville Bridge and Holliday's Cove Railroad across the Ohio, in what is called the Panhandle of Virginia. This bridge was first attempted under a charter granted by Ohio; but Congress at last interfered, and enacted, —

"That the bridge partly constructed across the Ohio River at Steubenville, in the State of Ohio, abutting on the Virginia shore of said river, is hereby declared to be *a lawful structure*."

"That the said bridge and Holliday's Cove Railroad are hereby declared a public highway, and established a *post-road* for the purpose of transmission of mails of the United States."[2]

[1] State of Pennsylvania *v.* Wheeling and Belmont Bridge Company : 18 Howard, R., 421.

[2] Statutes at Large, Vol. XII. pp. 569, 570.

Such are precedents of courts and of statutes, showing how completely this power belongs to Congress in the regulation of internal commerce. The authorities are plain and explicit. They cannot be denied. They cannot be explained away. It would be superfluous to dwell on them. There they stand like so many granite columns, fit supports of that internal commerce, in itself a chief support of the Union.

Secondly. There is also the power "to establish post-roads," which is equally explicit. Here, too, the words are plain, and they have received authoritative exposition. It is with reference to these words that Mr. Justice Story remarks that "constitutions of government do not turn upon ingenious subtleties, but are adapted to the business and exigencies of human society; and the powers given are understood in a large sense, in order to secure the public interests. Common sense becomes the guide, and prevents men from dealing with mere logical abstractions."[1] The same learned authority, in considering the text of the Constitution, seems to have anticipated the very question before us. Here is a passage which may fitly close the argument on this head: —

"Let a case be taken *when State policy*" —

as, for instance, in New Jersey at this time, —

"or State hostility shall lead the Legislature to close up or discontinue a road, the nearest and the best between two great States, rivals, perhaps, for the trade and intercourse of a third State; shall it be said that Congress has no right to make or repair a road for keeping open for the mail the best means of communication between those States? May

[1] Commentaries on the Constitution, Vol. II. § 1134.

the National Government be compelled to take the most inconvenient and indirect routes for the mail? *In other words, have the States a power to say how and upon what roads the mails shall and shall not travel?* If so, then, in relation to post-roads, the States, and not the Union, are supreme."[1]

Thirdly. Then comes the power "to raise and support armies," — an unquestionable power lodged in Congress. But this grant carries with it, of course, all incidental powers necessary to the execution of the principal power. It would be absurd to suppose that Congress was empowered to raise an army, but could not authorize the agencies required for its transportation from place to place. Congress has not been guilty of any such absurdity of abnegation. Already by formal Act it has proceeded "to authorize the President of the United States in certain cases to take possession of railroad and telegraph lines." By this Act the President is empowered "to take possession of any or all the railroad lines in the United States, their rolling stock, their offices, shops, buildings, and all their appendages and appurtenances," and it is declared that any such railroad "shall be considered as a post-road and a part of the military establishment of the United States."[2] Here is the exercise of a broader power than any now proposed. The less must be contained in the greater.

Such are the three sources of power in the Constitution, each and all applicable to the present case. Each is indisputable. Therefore the conclusion, sustained by each, is threefold indisputable.

[1] Commentaries on the Constitution, Vol. II. § 1144.
[2] Statutes at Large, Vol. XII. p. 334.

So plain is this power, that it has been admitted by New Jersey in a legislative act, as follows: —

"That, when any other rail road or roads for the transportation of passengers and property between New York and Philadelphia across this State shall be constructed and used for that purpose, under or by virtue of *any law of this State or the United States authorizing or recognizing said road*, that then and in that case the said dividends shall be no longer payable to the State, and the said stock shall be re-transferred to the Company by the Treasurer of this State." [1]

Thus, in formal words, has New Jersey actually anticipated the very measure under consideration. All that is now proposed, so far as concerns New Jersey, is simply to recognize other railroads for the transportation of passengers and property between New York and Philadelphia across this State.

Such is the argument in brief for the constitutionality of the present bill, whether regarded as a general measure applicable to all railroads, or only applicable to the railroads of New Jersey. The case is so plain and absolutely unassailable that I should leave it on this simple exhibition, if the Senator from Maryland [Mr. REVERDY JOHNSON], who always brings to these questions the authority of professional reputation, had not most zealously argued the other way. According to him the bill is unconstitutional. Let me say, however, that the conclusion of the learned Senator is only slightly sustained by the reasons he assigns. Indeed, his whole elaborate argument, if brought to the touchstone, is found inconclusive and unsatisfactory.

[1] Acts of the General Assembly of New Jersey, 1830 – 31, p. 75.

The Senator opened with the proposition, that the internal commerce of a State is within the exclusive jurisdiction of the State, and from this he argued that the present bill is unconstitutional. But the Senator will allow me to say that his proposition is not sufficiently broad for his conclusion. The present bill does not touch the internal commerce of a State, except so far as it is a link in the chain of "commerce among States," committed by the Constitution to the jurisdiction of Congress. This distinction must be made; for it is essential to a right understanding of the case.

From this inapplicable proposition the Senator passed to another equally inapplicable. He asserted that the jurisdiction of a State over all territory within its limits was exclusive, so that the United States cannot obtain jurisdiction over any portion thereof, except by assent of the State; and from this again he argued the unconstitutionality of the present bill. But this very illustration seems to have been anticipated by Mr. Justice Story in his excellent Commentaries, where he shows conclusively, first, that it is inapplicable, and, secondly, that, if it were applicable, it would be favorable to the power. Here are his words:—

"The clause respecting cessions of territory for the seat of Government, and for forts, arsenals, dock-yards, &c., has nothing to do with the point. *But if it had, it is favorable to the power.* . . . . But surely it will not be pretended that Congress could not erect a fort or magazine in a place within a State, unless the State should cede the territory. The only effect would be that the jurisdiction in such a case would not be exclusive. Suppose a State should prohibit a sale of any of the lands within its boundaries by its own citizens, for any public purposes indispensable for the

Union, either military or civil; would not Congress possess a constitutional right to demand and appropriate land within the State for such purposes, making a just compensation? *Exclusive jurisdiction over a road is one thing; the right to make it is quite another.* A turnpike company may be authorized to make a road, and yet may have no jurisdiction, or at least no exclusive jurisdiction, over it."[1]

Had the distinguished Commentator anticipated the argument of the Senator, he could not have answered it more completely.

Passing from these constitutional generalities, the Senator came at once to an assumption, which, if sustained, would limit essentially the national power with regard to post-roads. According to him, the words of the Constitution authorizing Congress "to establish post-roads" mean only that it shall "designate roads already existing"; and in support of this assumption he relied upon the message of Mr. Monroe, in 1822, on the Cumberland Road. The learned Senator adds, that this is "the received opinion, uniformly acted upon, and since recognized as the correct opinion by the judiciary." Of course his testimony on this head is important; but it is overruled at once by the authority I have already cited, which says that "the power to establish post-offices and post-roads has never been understood to include no more than the power to *point out* and *designate* post-offices and post-roads."[2] In the face of Mr. Justice Story's dissent, expressed in his authoritative Commentaries, it is impossible to say that it is "the received opinion," as asserted by the Senator. But the much quoted Commentator insists that "the

[1] Commentaries on the Constitution, Vol. II. § 1146.
[2] Ibid., § 1136.

Constitution itself uniformly uses the word 'established' in the general sense, and never in this peculiar and narrow sense," and, after enumerating various places where it occurs, says, "It is plain that to construe the word in any of these cases as equivalent to *designate* or *point out* would be absolutely absurd. The clear import of the word is to create, and form, and fix in a settled manner. . . . . To establish post-offices and post-roads is to frame and pass laws to erect, make, form, regulate, and preserve them. Whatever is necessary, whatever is appropriate to this purpose, is within the power."[1] I might quote other words from the same authority; but this is enough to vindicate the power the Senator has denied.

Here it is my duty to remind the Senate that the argument of the Senator on this head is not only false in assumption, but that the assumption, even if correct, is entirely inapplicable. The bill before the Senate does not undertake to create, but simply to *designate* or *point out*, certain roads. Therefore it does not fall under the objection the Senator makes. Even by his own admission it is constitutional.

But, not content with an erroneous assumption concerning post-roads, which, even if correct, is entirely inapplicable, the Senator makes another assumption concerning another clause of the Constitution, equally erroneous and inapplicable. He argues that the railroad charters in New Jersey were grants in the nature of a contract, and were protected by "the constitutional inhibition upon the States interfering with contracts"; and here he refers to several decisions of the Supreme Court of the United States. I do not trouble you with

[1] Commentaries on the Constitution, Vol. II. § 1131.

the decisions. It is enough, if I call attention to the precise text of the Constitution, which is, "*No State* shall pass any law impairing the obligation of contracts."

Look at these words, and it appears, in the first place, that this inhibition is addressed to the States, and not to Congress, whose powers are not touched by it. Look still further at the railroad charters, and, even admitting that they were grants in the nature of contract, you cannot deny that the contract must be interpreted with reference to the Constitution of the United States. Learned judges have held that the law of the place where a contract is made not only regulates and governs it, *but constitutes part of the contract itself.* But if the law constitutes part of the contract, still more must the Constitution. Apply this principle and the case is clear. Every railroad charter has been framed subject to the exercise of the acknowledged powers of Congress, all of which are implied in the grant as essential conditions, not less than if set forth expressly. The Supreme Court has decided that all contracts are made subject to the right of *eminent domain,* so that they cannot be considered as violated by the exercise of this right.[1] But the powers of Congress, invoked to regulate commerce among the several States, to establish post-roads, and to raise and equip armies, are in the nature of *eminent domain,* to which all local charters are subject. Therefore, I repeat, nothing is proposed "impairing the obligation of contracts," even if that well-known inhibition were applicable to Congress.

From these details of criticism the Senator jumped to a broader proposition. He asserted that the pend-

[1] The West River Bridge Company *v.* Dix et al., 6 Howard, R., 507.

ing measure destroyed what he called the sovereignty of the States, and he even went so far as to say that it was the same as if you said that all State legislation is null and void. These, Sir, were his exact words. How the Senator, even in any ardor of advocacy, could venture on such assertion, it is difficult to comprehend. Here is a measure, founded, as I have already demonstrated, on three different texts of the Constitution, upheld by three unassailable supports, and also in essential harmony with the Union itself; and yet we are told that it destroys the sovereignty of the States. Such an assumption seems uttered in the very wantonness of unhesitating championship. If anything but a phrase, it must be condemned, not only as without foundation, but as hostile to the best interests of the country.

Sir, the pending measure is in no respect destructive of any rights of the States; nor does it in any sense say that all State legislation is null and void. On the contrary, it simply asserts a plain and unquestionable power under the National Constitution. If in any way it seems to touch what is invoked as State sovereignty, or to set aside any State legislation, it is only in pursuance of the Constitution. It is simply because the Constitution, and the laws made in pursuance thereof, are *the supreme law of the land.*

The assumptions of the Senator bring me back to the vital principle with which I began. After exhibiting the public convenience involved in the present question, I said that it concerned still more the unity of the Republic. It is, in short, that identical question which has so often entered this Chamber, and is now convulsing the land with bloody war. It is the question of

the Union itself. In his ardor for that vampire monopoly, which, brooding over New Jersey, sucks the life-blood of the whole country, the Senator from Maryland sets up most dangerous pretensions in the name of State Rights. Sir, the Senator flings into one scale the pretensions of State Rights: into the other scale I fling the Union itself.

Sir, the Senator from Maryland is a practised lawyer, and he cannot have forgotten that Nathan Dane, whose name is an authority in our courts, tells us plainly that the terms "sovereign States," "State sovereignty," "State rights," and "rights of States" are "not constitutional expressions."[1] Others of equal weight in the early history of the country have said the same thing. Mr. Madison, in the Convention which framed the Constitution, said: "Some contend that States are *sovereign*, when, in fact, they are only political societies. The States never possessed the essential rights of sovereignty. These were always vested in Congress."[2] Elbridge Gerry, of Massachusetts, in the same Convention, said: "It appears to me that the States never were independent. They had only corporate rights."[3] Gouverneur Morris, of Pennsylvania, with the same distinct language he used in denouncing Slavery, said of the States: "They were originally nothing more than colonial corporations."[4] Both Patrick Henry and George Mason, in the Virginia Convention, opposed the Constitution on the very ground that it superseded State rights. But perhaps the true intention of the authors of the Constitution may be best found

[1] Abridgment of American Law, Appendix to Vol. IX. p. 10.
[2] Yates's Minutes, June 29, 1787: Elliot's Debates (2d edit.), Vol. I. p. 461.
[3] Ibid., p. 464.
[4] Madison's Debates, July 7, 1787: Madison Papers, Vol. II. p. 1049.

in the letter of General Washington, as President of the Convention, transmitting it to Congress. Here are his words: —

"It is obviously impracticable, *in the Federal Government of these States, to secure all rights of independent sovereignty to each*, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. . . . . In all our deliberations on this subject we kept steadily in our view that which appeared to us the greatest interest of every true American, *the consolidation of our Union*, in which is involved our prosperity, felicity, safety, perhaps our national existence"[1]

I am content, when I find myself with the support of this great name.

By the adoption of the Constitution the people of the United States constituted themselves *a Nation*, one and indivisible, with all the unity and power of a nation. They were no longer a confederation, subject to the disturbing pretensions, prejudices, and whims of component parts; but they became a body politic, where every part was subordinate to the Constitution, as every part of the natural body is subordinate to the principle of life. The sovereignty of the United States, where all are but parts of one vivifying whole, was the controlling unit. The powers then and there conferred upon the nation were supreme. And those very powers I now invoke, in the name of the Union, and to the end that pretensions in the name of State Rights may be overthrown.

I have thus presented a picture of these intolerable pretensions. But they must be examined more

[1] Madison's Debates, September 12, 1787.

minutely. They may be seen, *first*, in their character as a monopoly, and, *secondly*, in their character as a Usurpation under the Constitution of the United States. I need not say that in each they are equally indefensible.

If you go back to the earliest days of English history, you find that monopolies have from the beginning been odious, as contrary to the ancient and fundamental laws of the realm. A writer who is often quoted in the courts says: "All grants of this kind relating to any known trade are made void by the Common Law, as being against the freedom of trade, and discouraging labor and industry, and restraining persons from getting an honest livelihood by a lawful employment, and putting it in the power of particular persons to set what prices they please on a commodity."[1] But, without claiming that the present monopoly is void at Common Law, it is enough to show its inconsistency with the Constitution. Here I borrow Mr. Webster's language in his famous argument against the monopoly of steam navigation granted by the State of New York: —

"Now I think it very reasonable to say that *the Constitution never intended to leave with the States the power of granting* monopolies either of trade or of navigation, — and therefore, that, as to this, the commercial power is exclusive in Congress."[2]

Then again he says: —

"I insist that the nature of the case and of the power did imperiously require that such important authority as that

[1] Hawkins, Pleas of the Crown, Book I. ch. 79, sec. 1.
[2] Works, Vol. VI. p. 8.

of granting monopolies of trade and navigation *should not be considered as still retained by the States.*"[1]

And, yet again, he adduces an authority which ought to be conclusive on the present occasion: it is that of New Jersey, on the formation of the Constitution: —

"The New Jersey resolutions complain that the regulation of trade was in the power of the several States, within their separate jurisdiction, to such a degree as to involve many difficulties and embarrassments; and they express an earnest opinion that *the sole and exclusive power of regulating trade with foreign states ought to be in Congress.*"[2]

But the power of regulating trade "among the States" stands on the same reason, and also on the same text of the Constitution.

And yet, in face of these principles, we have a gigantic monopoly organized by New Jersey, composed of several confederate corporations, whose capital massed together is said to reach upwards of $27,537,977, — a capital not much inferior to that of the United States Bank, which once seemed to hold "divided empire" with the National Government itself. And this transcendent monopoly, thus vast in resources, undertakes to levy a toll on the commerce, the passengers, the mails, and the troops of the Union in transit between two great cities, both outside New Jersey. In attitude and pretension the grasping monopoly is not unlike Apollyon, in Bunyan's "Pilgrim's Progress," whose usurpation is thus described: —

"But now in this Valley of Humiliation poor Christian was hard put to it; for he had gone but a little way before

[1] Works, Vol. VI. p. 11. [2] Ibid., pp. 9, 10.

he espied a foul fiend coming over the field to meet him: his name is Apollyon. Then did Christian begin to be afraid, and to cast in his mind whether to go back or to stand his ground. . . . .

"Now the monster was hideous to behold: he was clothed with scales like a fish, and they are his pride; he had wings like a dragon, feet like a bear, and out of his belly came fire and smoke, and his mouth was as the mouth of a lion. When he was come up to Christian, he beheld him with a disdainful countenance, and thus began to question with him.

"APOLLYON. Whence come you, and whither are you bound?

"CHRISTIAN. I am come from the City of Destruction, which is the place of all evil, and am going to the City of Zion.

"APOLLYON. By this I perceive thou art one of my subjects; for all that country is mine, and I am the prince and god of it."

New Jersey is the Valley of Humiliation through which all travellers north and south from the city of New York to the city of Washington must pass; and the monopoly, like Apollyon, claims them all as "subjects," saying, "For all that country is mine, and I am the prince and god of it."

The enormity of the Usurpation is seen in its natural consequences. New Jersey claims the right to levy a tax for State revenue on passengers and freight in transit across her territory from State to State, — in other words, to levy a tax on "commerce among the several States." Of course the right to tax is the right to prohibit. The same power which can exact "ten cents from every passenger," according to the cry of the Camden and Amboy Railroad, by the voice of its coun-

sel, may exact ten dollars, or any other sum, and thus effectively close this great avenue of communication.

Again, if New Jersey can successfully play this game of taxation, and compel tribute from the domestic commerce of the Union traversing her territory on the way from State to State, then may every other State do likewise. New York, with her central power, may build up an overshadowing monopoly and a boundless revenue, while all the products and population of the West traversing her territory on the way to the sea, and all the products and population of the East, with the contributions of foreign commerce, traversing her territory on the way to the West, are compelled to pay tribute. Pennsylvania, holding a great highway of the Union, — Maryland, constituting an essential link in the chain of communication with the national capital, — Ohio, spanning from lake to river, and forming a mighty ligament of States, east and west, — Indiana, enjoying the same unsurpassed opportunities, — Illinois, girdled by States with all of which it is dovetailed by railroads, east and west, north and south, — Kentucky, guarding the gates of the Southwest, — and, finally, any one of the States on the long line of the Pacific Railroad, — may enter upon a similar career of unscrupulous exaction, until anarchy sits supreme, and there are as many different tributes as there are States. If the Union should continue to exist, it would be only as a name. The national unity would be destroyed.

The taste of revenue is to a government like the taste of blood to a wild beast, exciting and maddening the energies, so that it becomes deaf to suggestions of justice; and the difficulties must increase, where this taxation is enforced by a comprehensive monop-

oly. The State, once tasting this blood, sees only an easy way of obtaining the means it desires; and other States will yield to the same temptation. The poet, after picturing vice as a monster of frightful mien, tells us in familiar words, —

> "Yet seen too oft, familiar with her face,
> We first endure, then pity, then embrace."

A profitable Usurpation, like that of New Jersey, would be a tempting example to other States. "It is only the first step that costs." Let this Usurpation be sanctioned by Congress, and you hand over the domestic commerce of the Union to a succession of local imposts. Each State will be a tax-gatherer at the expense of the Union. Each State will play the part of Don Quixote, and the Union will be Sancho Panza, not only bound to contributions, but driven to receive on bare back the lashes which were the penance of the knightly adventurer. If there be any single fruit of our national unity, if there be any single element of the Union, if there be any single triumph of the Constitution to be placed above all others, it is the freedom of commerce between the States, under which *free trade*, the aspiration of philosophy, is assured to all citizens of the Union, as they circulate through our whole broad country, without hindrance from any State. But this vital principle is now in jeopardy.

Keep in mind that it is the tax imposed on commerce between New York and Philadelphia, two cities outside the State of New Jersey, which I denounce. I have denounced it as hostile to the Union. I also denounce it as hostile to the spirit of the age, which is everywhere overturning the barriers of commerce. The robber castles, once compelling payment of toll on the

Rhine, were long ago dismantled, and exist now only as monuments of picturesque beauty. Kindred pretensions in other places have been overthrown or trampled out. Duties levied by Denmark on all vessels passing through the Sound and the Belts, duties levied by Hanover on the goods of all nations at Stade on the Elbe, tolls exacted on the Danube in its protracted course, tolls exacted by Holland on the busy waters of the Scheldt, and transit imposts within the great Zollverein of Germany, have all been abolished; and in this work of enfranchisement the Government of the United States led the way, insisting, in the words of President Pierce, in his Annual Message, "on the right of *free transit* into and from the Baltic."[1] But the right of free transit across the States of the Union is now assailed. Can you who reached so far to secure *free transit* in the Baltic now hesitate in its defence here at home?

Thank God, within the bounds of the Union, under the National Constitution, commerce is made free. As the *open sea* is the highway of nations, so is this Union made the highway of the States, with all their commerce, and no State can claim any exclusive property therein. The Union is a *mare liberum*, beyond the power of any State, and not a *mare clausum*, subject to as many tyrannies as there are States. And yet the State of New Jersey asserts the power of closing a highway of the Union.

Such a pretension, so irrational and destructive, cannot be dealt with tenderly. Like the serpent, it must be bruised on the head. Nor can there be wise delay. Every moment of life yielded to such a Usurpation is like the concession once in an evil hour yielded to Nul-

[1] Annual Message, December 31, 1855.

lification, kindred in origin and character. The present pretension of New Jersey belongs to the same school with that abhorred and blood-bespattered pretension of South Carolina.

Perhaps, Sir, it is not unnatural that the doctrines of South Carolina on State Rights should obtain shelter in New Jersey. Like sees like. There is a common bond among the sciences, among the virtues, among the vices, — and so, also, among the monopolies. The monopoly founded on the hideous pretension of property in man obtained responsive sympathy in that other monopoly founded on the greed of unjust taxation, and both were naturally upheld in the name of State Rights. Both must be overthrown in the name of the Union. South Carolina must cease to be a Slave State, and New Jersey must also cease her disturbing pretension. All hail to the genius of Universal Emancipation! All hail to the Union, victorious over the Rebellion, — victorious, also, over a Usurpation which menaces the unity of the Republic!

REPRESENTATION OF VIRGINIA IN THE SENATE.

Remarks in the Senate, on the Credentials of Hon. Joseph Segar, of Virginia, February 17, 1865.

February 17th, Mr. Willey, of West Virginia, presented the credentials of Hon. Joseph Segar, appointed Senator by a State Government of Virginia, sitting at Alexandria. Mr. Sumner moved their reference to the Committee on the Judiciary, and during the discussion that ensued said: —

I REGRET that a question of this magnitude has been precipitated upon the Senate at this late period of the session, when there is so much public business which has not yet received the attention of either House of Congress. The Senator from Michigan [Mr. Howard] does not exaggerate its magnitude. Sir, it is much to be a Senator of the United States, with all the powers and privileges pertaining to that office, legislative, diplomatic, and executive; and the question is, whether all these shall be recognized in the gentleman whose certificate has been sent to the Chair. I thought it my duty, on hearing the certificate read as I entered the Chamber, to move its reference to the Committee on the Judiciary. I am astonished that there can be any hesitation in that reference. Senators who hesitate show insensibility to the character of the question. Will the Senate act blindfold, or with eyes open? I

insist that on such a question it shall act with eyes open, wide open; and I know no way in which this can be accomplished, except through the intervention of a responsible Committee. Therefore, Sir, I proposed that the credentials should be referred. It will be the duty of the Committee, as my friend from Michigan suggests, to consider, in the first place, whether a State in armed rebellion, like Virginia, can have Senators on this floor. That is a great question, constitutional, political, practical. It will be their duty then to consider whether the gentleman whose credentials are before us is the legal choice of any State under the National Constitution. Now, Sir, I do not intend to prejudge either of these questions. I simply open them for consideration.

I say, Sir, I do not mean to prejudge these questions; but I do insist that a measure of this importance shall not be acted on without due consideration, and in absolute indifference to facts staring us in the face, glaring upon us every day in every newspaper that we read. Sir, you cannot be insensible to facts. It is in vain that Senators say that Virginia, now in war against the Union, is entitled to representation on this floor, when you have before you the inexorable fact that the greater part of the State is at this moment in the possession of an armed Rebellion, and that other fact, repeated by the newspapers of the land, that the body of men who have undertaken to send a Senator to Congress are little more than the Common Council of Alexandria. The question is distinctly presented, whether a representative of the Common Council of Alexandria is to enter this Chamber, and share the powers and privileges of my honorable friend near me, the Senator from New

York [Mr. MORGAN], or my friend farther from me, the Senator from Pennsylvania [Mr. COWAN]. I merely open these points, without undertaking to decide them, but simply as an unanswerable argument in favor of the reference.

Afterwards, in reply to Mr. Foster, of Connecticut, Mr. Sumner said: —

SUPPOSE it was matter of public notoriety that I came into this Chamber with a certificate from a body of men in Boston, little more in number and character than the Common Council of that city, not in fact supposed to represent the State; suppose this fact much received in the country; then I submit to the Senator whether it would not be the duty of the Senate, before receiving my credentials, to inquire into their origin.

The debate continued, when Mr. Sherman, of Ohio, moved that the credentials lie on the table. The motion was adopted, — Yeas 29, Nays 13. Mr. Segar's claim to a seat was never prosecuted.

REPUDIATION OF THE REBEL DEBT.

Concurrent Resolution in the Senate, February 17, 1865.

February 17th, Mr. Sumner introduced the following concurrent resolution, and asked its immediate consideration.

WHEREAS certain persons have put in circulation the report, that, on the suppression of the Rebellion, the Rebel debt or loan may be recognized in whole or in part by the United States; and

Whereas such a report is calculated to give a false value to such Rebel debt or loan: Therefore,

Resolved by the Senate (the House of Representatives concurring), That Congress hereby declares that the Rebel debt or loan is simply an agency of the Rebellion, which the United States can never, under any circumstances, recognize in any part or in any way.

Mr. Saulsbury and Mr. McDougall objecting, its consideration was postponed. In the evening of the same day the resolution was taken up, on motion of Mr. Sumner, and adopted without a division.

March 3d, the resolution was concurred in by the House of Representatives without a division.

This resolution was a direct answer to a pretension set up in England.

NO BUST FOR AUTHOR OF DRED SCOTT DECISION.

Speech in the Senate, on a Bill providing for a Bust of the late Chief Justice Taney, February 23, 1865.

February 23d, Mr. Trumbull moved to proceed with the consideration of a bill from the House of Representatives requiring the Joint Committee of the two Houses on the Library to contract with a suitable artist for the execution in marble, and delivery in the Supreme Court Room of the United States, in the Capitol, of a bust of the late Chief Justice Taney, and appropriating one thousand dollars for this purpose. On the question of taking it up, Mr. Sumner said: "I object. An emancipated country should not make a bust of the author of the Dred Scott decision." The motion to take up prevailed, when Mr. Sumner said: —

MR. PRESIDENT, — I objected to this joint resolution, when it was reported by the Senator from Illinois [Mr. Trumbull], and he was disposed to hurry it upon the Senate, to the exclusion of important business. I objected to it again to-day; but it was from no indisposition to discuss it.

I know well the trivial apology which may be made for this proposition, and the Senator from Maryland [Mr. Johnson] has already shown something of the hardihood with which it may be defended. In the performance of public duty I am indifferent to both.

The apology is too obvious. "Nothing but good of the dead." This is a familiar saying, which, to a cer-

tain extent, is acknowledged. But it is entirely inapplicable, when statues and busts are proposed in honor of the dead. Then, at least, truth must prevail.

If a man has done evil during life, he must not be complimented in marble. And if indiscreetly it is proposed to decree this signal honor, then the evil he has done must be exposed; nor shall any false delicacy seal my lips. It is not enough that he held high place, that he enjoyed worldly honors, or was endowed with intellectual gifts.

> "Who wickedly is wise, or madly brave,
> Is but the more a fool, the more a knave."

What is the office of Chief Justice, if it has been used to betray Human Rights? The crime is great according to the position of the criminal.

If asked, Sir, to mention the incident of our history, previous to the Rebellion, most worthy of condemnation, most calculated to cause the blush of shame, and most deadly in its consequences, I do not doubt that you would name the Dred Scott decision, and especially the unhallowed assertion of the Chief Justice. I say this with pain. I do not seek this debate. But when a proposition is made to honor the author of this enormity with a commemorative bust, at the expense of the country, I am obliged to speak plainly.

I am not aware that the English judges who decided contrary to Liberty in the case of ship-money, sustaining the king in those pretensions which ended in Civil War, have ever been commemorated in marble. I am not aware that Jeffreys, Chief Justice and Chancellor of England, famous for talents as for crimes, has found any niche in Westminster Hall. No, Sir. They have been left to the judgment of history; and there I insist

that Taney shall be left in sympathetic companionship. Each was the tool of unjust power. But the power Taney served was none other than that Slave Power which has involved the country in hideous war.

I speak what cannot be denied, when I declare that the opinion of the Chief Justice in the case of Dred Scott was more thoroughly abominable than anything of the kind in the history of courts. Then and there judicial baseness reached its lowest point. You have not forgotten that terrible decision, where an unrighteous judgment was sustained by falsification of history. Of course the Constitution of the United States and every principle of Liberty were falsified; but historical truth was falsified also. I have here the authentic report of the case, where it appears that the Chief Justice, while enforcing his unjust conclusion, blasting a whole race, used the following language.

"It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world *at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.*

"They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations, — *and so far inferior, that they had no rights which the white man was bound to respect,* and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. *This opinion was at that time fixed and universal in the civil-*

ized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute."[1]

In these words, solemnly and authoritatively uttered by the Chief Justice of the United States, humanity and truth were set at nought, and the whole country was humbled. "Then I and you and all of us fell down, whilst bloody *Slavery* flourished over us."

I quote his words fully, so that there can be no mistake. Here, then, is his expressed assertion, that at the Declaration of Independence in 1776, and the adoption of the National Constitution in 1789, in Europe as well as in our own country, colored men were regarded as having "no rights which the white man was bound to respect." Now, Sir, this is false, — terribly false. It is notorious that there were States of the Union, where, at the adoption of the Constitution, colored persons were free, and even in the enjoyment of the electoral franchise, while in England the Somerset case had already decided that there could be no distinction of persons on account of color, and Scotland, France, and Holland had all declared the same rule. Even Spain had spoken by the voice of some of her best children. So had Portugal. So also had Italy, and the Catholic Church. On this point there is no question. And yet this Chief Justice, whom you would honor with a marble bust, had the strange effrontery to declare that at that time, as well abroad as at home, colored men were regarded as having "no rights which the white man was bound to respect"; and this he said to justify a brutal inter-

[1] Dred Scott *v.* Sandford, 19 Howard, R., 407.

pretation of the Constitution. Search judicial annals and you find no perversion of truth more flagrant.

Sir, it is not fit, it is not decent, that such a person should be commemorated by a vote of Congress, — especially at this time, when Liberty is at last recognized. If you have money to commemorate the dead, let it be in honor of the defenders of Liberty gathered to their fathers. There was John Quincy Adams. There, also, was Joshua R. Giddings. Let their busts be placed in the Court-Room, where with marble lips they can plead always for human rights, teaching judge and advocate the glory and the beauty of justice. Then will you do something not entirely unworthy of a regenerated land, something to be an example for future times, something to help fix the standard of history.

I know that in the Court-Room there are busts of the other Chief Justices. Very well. So in the Hall of the Doges, at Venice, there are pictures of all who filled that high office in unbroken succession, with the exception of Marino Falieri, who, although as venerable from years as Taney, was deemed unworthy of a place in the historic line. Where his picture should have been is a vacant space, testifying always to the justice of the Republic. Let such a vacant space in our Court-Room testify to the justice of our Republic, and may it speak in warning to every one who would betray Liberty!

The appropriation was vindicated by Mr. Trumbull, Mr. Reverdy Johnson, of Maryland, and Mr. Carlile, of West Virginia. It was opposed by Mr. Hale, of New Hampshire, Mr. Wilson, of Massachusetts, and Mr. Wade, of Ohio. Mr. Sumner then obtained the floor.

At last I have the floor again. I rose at once to reply to the Senator from Maryland [Mr. JOHNSON], when he made his objurgatory vindication of the proposed bust; but the floor was given to others. And now, as I look at the clock, I see that I can only begin what I have to say.

Again let me declare that I am sorry to be drawn into this debate. But they who seek to canonize one of the tools of Slavery are responsible. Taney shall not be recognized as a saint by any vote of Congress, if I can help it.

The Senator has a bad cause, and I inferred that he thought so himself, — first, because he talked so loud, and, secondly, because he became personal. A good cause would have been discussed in softer voice, and without personality. The Senator becomes personal easily. In the sweep of his movement, he brushed against my distinguished friend from New Hampshire [Mr. HALE], and also against my colleague and myself, simply because we could not join in this oblation to the author of the Dred Scott decision. The Senator from New Hampshire and my colleague have already answered him in proper terms. But I say for my colleague what he could not say for himself. He can bear gibes for not being a lawyer. He is not, like the Senator, a counsellor of the Supreme Court of the United States, but in all the duties of Senator he is in every respect the equal of the Senator from Maryland. ——

Here Mr. Sumner was arrested by the Vice-President announcing that the hour fixed for a recess had arrived. The consideration of the bill was never resumed, and it expired with the session. Had opportunity occurred, Mr. Sumner would have continued: —

I have already said that Chief Justice Taney, in pronouncing that fatal judgment, falsified history. Judicial error is aggravated by such a falsification; and here the evidence is complete. His statement is precise, that for more than a century before the Declaration of Independence and the adoption of our Constitution people of the African race had "been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations"; and this unhappy asseveration culminates in the words, "and so far inferior that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit." And he adds: "*This opinion was at that time fixed and universal* in the civilized portion of the white race. It was regarded as an axiom in morals, as well as in politics, which no one thought of disputing or *supposed to be open to dispute.*" This is plain, though failing in the precision which belongs to the bench. But how untrue! All this naturally ends in shutting out the unhappy African from citizenship, involving the right to sue in the courts of the United States.

Unhappily, at that time Slavery prevailed extensively; but it had already received many blows, while the rights of the African were asserted not only by individuals, but by communities. Nay, more, from the beginning, the axiom of the Chief Justice, which, according to him, no one supposed open to dispute, had been assailed. Great authorities, great names, together with legislative and judicial bodies, stood forth against it.

There is Massachusetts, my own honored Commonwealth. From the earliest days of her history Slavery

found little favor with her Legislature or her people. As early as 1645 the Legislature sent back two negroes brought from Guinea in a Boston ship, and the next year repeated its testimony against "the heinous and crying sin of man-stealing."[1] In the same spirit, John Eliot, the apostle to the Indians, presented a memorial to the Governor and Council against selling captured Indians into slavery, saying, "To sell souls for money seemeth to me a dangerous merchandise."[2] In 1701, Boston desired her Representatives in the General Court "to promote the encouraging the bringing of white servants, and to put a period to negroes being slaves."[3] At the same time Chief Justice Sewall, of a family constant in warfare with Slavery, published a tract entitled "The Selling of Joseph a Memorial," where he maintained that "originally and naturally there is no such thing as Slavery," and that "these Ethiopians, as black as they are, seeing they are the sons and daughters of the first Adam, the brethren and sisters of the last Adam, and the offspring of God, they ought to be treated with a respect agreeable."[4] In this spirit, the judicature of Massachusetts, in 1770, made haste against Slavery, by declaring the principle of Emancipation, — according to one authority, two years before the famous Somerset case in England.[5] This was followed, in 1780, by the Declaration of Rights, announcing that "all men are born free and equal," which the same judicature interpreted as abolishing

[1] Records of the Governor and Company of the Massachusetts Bay, Vol. III. pp. 49, 84.

[2] Records of the Colony of New Plymouth, Vol. X. p. 452, Appendix.

[3] Coll. Mass. Hist. Soc., 2d Ser. Vol. VIII. p. 184.

[4] Historical Magazine, June, 1864, Vol. VIII. pp. 195, 197: first printed Boston, 1700.

[5] Washburn, Judicial History of Massachusetts, p. 202.

Slavery; so that at the adoption of the National Constitution Slavery did not exist in Massachusetts. That this undoubted history should have been disregarded by the Chief Justice is more astonishing, when it is considered that the conclusion belonged to the jurisprudence of our country. In a case well known to all interested in the history of Slavery, and especially to lawyers, decided in 1836, Chief Justice Shaw said: "How, or by what act particularly, Slavery was abolished in Massachusetts, whether by the adoption of the opinion in Somerset's case, as a declaration and modification of the Common Law, or by the Declaration of Independence, or by the [State] Constitution of 1780, it is not now very easy to determine; and it is rather a matter of curiosity than of utility, *it being agreed on all hands*, that, if not abolished before, it was so by the Declaration of Rights."[1] And yet even these words are forgotten in this fatal decision.

Here we must mention Rhode Island with honor. This State, planted by Roger Williams, may point with pride to her early record on Slavery. At a General Court held May 19, 1652, after setting forth, that "there is a common course practised amongst Englishmen to buy negroes, to that end they may have them for service or slaves forever," it was ordered, "that no black mankind, or white, being forced by covenant bond, or otherwise, to serve any man or his assigns longer than ten years, or until they come to be twenty-four years of age, if they be taken in under fourteen, from the time of their coming within the liberties of this colony."[2] If Rhode Island afterwards

[1] Commonwealth *v.* Aves, 18 Pickering, R., 209.

[2] Records of the Colony of Rhode Island and Providence Plantations, Vol. I. p. 243.

departed from this law, it existed, nevertheless, as an example not to be forgotten by the Chief Justice. Nor should he have forgotten that Pennsylvania, as early as 1712, passed an act to prevent the increase of slaves, although it was annulled by the Crown,[1] and that this same State enacted, March 1, 1780, that all persons born in that State after that day were free at the age of twenty-eight years.[2] But all this is inconsistent with the famous "axiom" on which the Chief Justice founded his fearful superstructure.

I need go no further than the dissenting opinion of Mr. Justice Curtis, on this very occasion, to find, that, "at the time of the ratification of the Articles of Confederation, all free native-born inhabitants of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors on equal terms with other citizens."[3] Was all this forgotten by the Chief Justice? But how could he forget the decision of the admirable Judge Gaston, of North Carolina, who, describing the State Constitution of 1776, says, that it "extended the elective franchise to every freeman who had arrived at the age of twenty-one and paid a public tax; and it is a matter of universal notoriety, that, under it, free persons, without regard to color, claimed and exercised the franchise, until it was taken from

[1] Act to prevent the Importation of Negroes and Indians, June 7, 1712: Laws, ed. Dallas (Philadelphia, 1797), Vol. I. p. 93; Archives, ed. Hazard, Vol. I. pp. 160, 162.

[2] Act for the Gradual Abolition of Slavery: Laws, ed. Dallas, Vol. I. p. 838.

[3] Dred Scott *v.* Sandford, 19 Howard, R., 572, 573.

free men of color a few years since by our amended Constitution"?[1]

Strangely, he forgets also an important passage of history, being nothing less than the point-blank refusal of the Continental Congress to insert the word "white" in the Articles of Confederation. The question came up June 25, 1778, on these words: "The *Free Inhabitants* of each of these States (paupers, vagabonds, and fugitives from justice excepted) shall be entitled to all privileges and immunities of *free citizens* in the several States." The delegates from South Carolina, acting in the spirit of the Dred Scott decision, moved, in behalf of their State, to limit this guaranty to "free *white* inhabitants." On the question of inserting the word "white," eleven States voted, two in favor of the insertion, one was divided, and eight were against it. South Carolina, not disheartened, made another attempt, by moving to add, after the words "the several States," the further clause, "according to the law of such States respectively for the government of their own *free white* inhabitants," thus seeking again to limit the operation of this guaranty. This proposition was also voted down by the same decisive majority of eight to three.[2] Such was the authoritative testimony of our fathers. And in harmony with this action was the Resolution for the Temporary Government of the Western Territory "ceded or to be ceded by individual States to the United States," dated April 23, 1784, and drawn by Jefferson, and also the famous Ordinance for the Government of the Northwestern Territory, drawn by Nathan Dane, of Massachusetts, adopted by the Con-

[1] State *v.* Manuel, 4 Devereux & Battle, R., 25.

[2] Journals of Congress, Vol. III. p. 503; Vol. IV. pp. 379, 380.

federation July 13, 1787, in both of which the voters were without distinction of color.

Still more incomprehensible is the assertion of the Chief Justice, when we glance at the political literature of our country. Not only in Massachusetts, but elsewhere, the "axiom" of the Chief Justice, "which no one thought of disputing, or supposed to be open to dispute," was denied. Nobody did this in more energetic terms than General Oglethorpe, the founder of Georgia, who, in a letter to Granville Sharp, wrote, under date of October 13, 1776: "My friends and I settled the colony of Georgia, and by charter were established trustees, to make laws, &c. We determined not to suffer Slavery there. . . . . We would not suffer Slavery (which is against the Gospel, as well as the fundamental law of England) to be authorized under our authority; we refused, as trustees, to make a law permitting such a horrid crime."[1] In the same spirit, John Wesley, the founder of Methodism, who had witnessed the workings of Slavery on our continent and in the West Indies, declared "American Slavery the vilest that ever saw the sun," and the "execrable sum of all villanies." "Men-buyers" he stigmatizes as "exactly on a level with men-stealers," the slaveholder as "partaker with a thief, and not a jot honester," and the means whereby slaves are procured as "nothing near so innocent as picking of pockets, housebreaking, or robbery upon the highway."[2] So also spoke James Otis, in his famous pamphlet entitled "The Rights of the British Colonists Asserted

[1] Hoare's Memoirs of Granville Sharp (London, 1820), p. 157.

[2] Letter to a Friend, February 26, 1791; Journal, February 12, 1772; Thoughts upon Slavery, V. 5: Works (New York, 1856), Vol. VII. p. 237; Vol. IV. p. 366; Vol. VI. p. 292.

and Proved," first published in 1764, and reprinted in London, when he said: "The Colonists are, by the Law of Nature, free-born, as, indeed, all men are, white or black. . . . . Does it follow that it is right to enslave a man because he is black? Will short curled hair, like wool, instead of Christian hair, as it is called by those whose hearts are as hard as the nether millstone, help the argument? Can any logical inference in favor of Slavery be drawn from a flat nose, a long or a short face?"[1] And so spoke Benjamin Rush, the patriot physician of Philadelphia, in "An Address to the Inhabitants of the British Settlements on the Slavery of the Negroes in America," where Slavery is exhibited as "repugnant to the genius of Christianity" and inconsistent with "the justice and goodness of the Supreme Being," and "a Christian slave" is called "a contradiction in terms."[2] To these testimonies add the familiar words of statesmen, especially of Patrick Henry, "It is a debt that we owe to the purity of our religion, to show that it is at variance with that law that warrants Slavery,"[3] — and of Jefferson, in that memorable utterance, prompted by Slavery, "I tremble for my country, when I reflect that God is just, that His justice cannot sleep forever."[4] All these sayings, directly repellent to the allegation of the Chief Justice, have often been cited in public speech, and most of them appear in a work entitled "Slavery and Antislavery," by that devoted Abolitionist, William Goodell, published several years before the opinion of the Chief Justice.

[1] Rights of the British Colonies, p. 43.

[2] Address (Philadelphia, 1773, 2d edit.), with a Vindication of the same, pp. 8, 15, 52.

[3] Letter to Robert Pleasants, January 18, 1773: Goodell's Slavery and Antislavery, p. 70, note.

[4] Notes on Virginia, Query XVIII.

Forgetting laws, judicial decisions, history, and political literature, it was easy for the Chief Justice to forget how the religious sects of the country testified for the rights of the African, sometimes by individuals, and sometimes by corporate acts. Here the Quakers took the lead. As far back as 1688, a small body of German Quakers at Germantown, Pennsylvania, presented a protest to the Yearly Meeting against "buying, selling, and holding men in slavery,"[1] which was followed in 1696 by formal advice from this body that the members should "be careful not to encourage the bringing in of any more negroes, and that such that have negroes be careful of them."[2] One of their number, George Keith, denounced Slavery with especial vigor, as "contrary to the religion of Christ, the rights of man, and sound reason and policy."[3] At the beginning of the last century the Quakers of New England were agitated. In 1716, they sent forth a declaration from Nantucket, that "it is not agreeable to truth for Friends to purchase slaves and keep them term of life;"[4] and in 1730, Elihu Coleman, of Nantucket, wrote a tract in reprobation of Slavery as "anti-Christian," and "very opposite both to Grace and Nature."[5] In 1729, at Philadelphia, Ralph Sandiford exposed it in a pamphlet entitled "The Mystery of Iniquity"; and in 1737, Benjamin Lay gave to the

[1] Clarkson, History of the Abolition of the African Slave-Trade (Philadelphia, 1808), Ch. V., Vol. I. p. 112.

[2] Brief Statement of the Rise and Progress of the Testimony of the Religious Society of Friends against Slavery and the Slave-Trade (Philadelphia, 1843), p. 8.

[3] Notices of Negro Slavery as connected with Pennsylvania, by Edward Bettle: Mem. Hist. Soc. Penn., Vol. I. pp. 366, 367.

[4] Brief Statement, p. 43.

[5] A Testimony against that Anti-Christian Practice of making Slaves of Men: Macy's History of Nantucket, p. 279.

world his work with the expressive title, "All Slave-Keepers, that keep the Innocent in Bondage, Apostates," — and this was printed by Benjamin Franklin.[1] Then came the extraordinary labors of John Woolman, who, from 1746 to 1768, travelled through the Middle and Southern Colonies, an avowed Abolitionist, testifying against Slavery, — and of Anthony Benezet, who, by various writings, and by gratuitous instruction of negroes at an evening school, showed his sense of their common humanity. Meanwhile at their Yearly Meetings Slavery was condemned. In 1754, there was a recommendation "to advise and deal with such as engage" in the traffic, with the declared desire to guard against "promoting the bondage of such unhappy people."[2] In 1776, it was declared "that the owners of slaves who refused to execute proper instruments for giving them their freedom were to be disowned."[3] There are also reports of meetings, — in Rhode Island, in 1717, 1727, 1760, 1769, and thence, nearly every year, to 1787, — in New York, previous to 1759, and in 1767, 1771, 1772, 1774, 1775, 1776, 1777, 1781, 1782, 1784, 1785, 1787, — and in Virginia, in 1757, 1764, 1766, 1767, 1768, 1773, 1780, and thence annually, with but one intermission, to 1787, — where the rights of the African were recognized, and in most of them Slavery was condemned.[4] The meeting of 1782, in Rhode Island, spoke of "that iniquitous practice of holding or dealing with mankind as slaves."[5] The meeting of 1776, in New York, re-

[1] Memoirs of Benjamin Lay and Ralph Sandiford, by Roberts Vaux, pp. 29, 64. Goodell, Slavery and Antislavery, p. 40.

[2] Clarkson, Vol. I. p. 113. Brief Statement, p. 17.

[3] Clarkson, Vol. I. p. 119. Brief Statement, p. 30.

[4] Brief Statement, pp. 43-56. [5] Ibid., p. 47.

fused "to employ or accept the services in the church, or receive the collections," of those "who continue these poor people in bondage."[1] The meeting of 1773, in Virginia, earnestly recommended manumissions, and quoted the words of the Prophet, "The people of the land have used oppression and exercised robbery."[2] These are only illustrations of the extent to which the pretension of the Chief Justice was disowned.

More tardily, but with equal force, the Methodists declared against Slavery, speaking by such great preachers as George Whitefield and John Wesley. From the historian Hildreth, whose work appeared some time before the Dred Scott decision, we learn that the Methodist Episcopal Church, just before the adoption of the Constitution, disqualified slave-holders from being members, and that Coke, the first bishop, was exceedingly jealous on this subject, although, unhappily, the rule was afterwards relaxed.[3] The Presbyterians of the United Synod of New York and Philadelphia, in 1787, proposed nothing less than "to procure eventually the final Abolition of Slavery in America."[4] The Baptists of Virginia, in 1789, declared Slavery "a violent deprivation of the rights of Nature, and inconsistent with republican government."[5] The Congregationalists of New England testified most brilliantly by the celebrated theologian, Samuel Hopkins, who brought his church at Newport to declare "the slave-trade and the slavery of the Africans, as it has taken

[1] Brief Statement, p. 50.

[2] Ezekiel, xxii. 29. Brief Statement, p. 53.

[3] History of the United States, Vol. IV. p. 176.

[4] Records of the Presbyterian Church in the United States, from 1716 to 1788, (Philadelphia, 1841,) p. 540.

[5] Goodell, Slavery and Antislavery, p. 108.

place among us, is a gross violation of the righteousness and benevolence which are so much inculcated in the Gospel, and therefore we will not tolerate it in this church."[1] Already, in 1776, he had put forth a tract, showing it to be the duty and interest of the American Colonies to emancipate all their African slaves, and declaring that Slavery is "in every instance wrong, unrighteousness, and oppression, a very great and crying sin, there being nothing of the kind equal to it on the face of the earth";[2] and in 1791, soon after the adoption of the National Constitution, the second Jonathan Edwards, a twice-honored name, joined in this testimony.[3] But all this was forgotten by the Chief Justice.

Nor did he remember how, before the National Constitution, the opposition to Slavery, and sympathy with the African, found expression in Abolition Societies. That of Pennsylvania was formed in 1775, and bore the honorable title, "Society for the Abolition of Slavery, the Relief of Free Negroes unlawfully held in Bondage, and for improving the African Race." Its President at the very adoption of the Constitution was Benjamin Franklin, who, in this post, as elsewhere, bore his testimony that the African had rights which the white man was bound to respect. In 1785 began in New York a "Society for promoting the Manumission of Slaves, and protecting such of them as have been or may be liberated," with John Jay as President, who, like Franklin, bore his testimony in this

[1] Newport Church Records, March 5, 1784: Memoir of Dr. Hopkins, prefixed to his Works, ed. Parks, (Boston, 1854,) Vol. I. p. 157.

[2] Slavery of the Africans, a Dialogue: Works, Vol. II. p. 552.

[3] Sermon on the Injustice and Impolicy of the Slave-Trade, and of the Slavery of the Africans, September 15, 1791.

post, as elsewhere. In 1786, this distinguished individual drafted and signed a memorial to the Legislature of New York against Slavery, declaring that the men held as slaves by the laws of the State were free by the law of God; and this memorial was signed by Robert R. Livingston and Alexander Hamilton. In Maryland, the State of the Chief Justice, an Abolition Society was formed in 1789, and among its officers were Samuel Chase, a signer of the Declaration of Independence, and Luther Martin, a member of the Convention that framed the National Constitution. How active these societies were in petitioning Congress, shortly afterwards, belongs to the history of our country. A petition was headed by Franklin, which, after pleading for the rights of all, "without distinction of color," entreated Congress that it would "step to the very verge of the power vested in it, for discouraging every species of traffic in the persons of our fellow-men."[1] All this is found in so common a book as the history by William Goodell, already quoted; but the Chief Justice knew it not.

I call attention especially to Maryland, where, at the very date of the Constitution, and in the Legislature of the State, a generous voice was lifted against Slavery by no less a person than William Pinkney, so famous as diplomatist, Senator, and consummate lawyer. He did not spare words. According to him, Slavery was "iniquitous and most dishonorable," "founded in a disgraceful traffic," "its continuance as shameful as its origin," — and he bravely declared, that, "by the eternal principles of natural justice, no master in the State has a right to hold his slave in bondage

[1] Annals of Congress, 1st Cong. 2d Sess., col. 1197, 1198.

for a single hour."[1] There also was the neighbor State of Delaware, where, at the beginning of our Revolution, under date of "Wilmington, Sixth Month 20th, 1775," Daniel Byrnes put forth a broadside entitled "A Short Address to the English Colonies in North America," where he exposes the wrong to the African, and inquires, "How can any have the confidence to put up their addresses to a God of impartial justice, and ask of Him success in a struggle for freedom, who at the same time are keeping others in a state of abject slavery?" But the Chief Justice, whose long life was passed near the home of Pinkney and of Byrnes, yet, in face of their unanswerable testimony, utters his strange extravagance.

Pass now to England, and here the falsification is kindred to that I have exposed with regard to our own country; and when we consider how English law, English history, and English literature are familiar to all educated lawyers among us, it is painful to observe the strange oblivion that overcame the Chief Justice with regard to their most brilliant chapters.

As early as 1569, in the reign of Queen Elizabeth, occurred the famous case of the slave brought from Russia, whose master sought to scourge him, when it was grandly resolved that "England was too pure an air for slaves to breathe in."[2] This case was cited by the managers of the Commons, during the Long Parliament, on the impeachment of the judges for their proceedings against John Lilburn and John Wharton;[3] so

[1] Speeches in the Maryland House of Delegates in 1788 and 1789: American Museum, Vol. VI. p 75, July, 1789; Wheaton's Life of Pinkney, p. 11.

[2] Rushworth's Historical Collections, Vol. II. p. 468.

[3] Howell's State Trials, Vol. III. col. 1315.

that it took a conspicuous place, not only in English law, but also in political history. The same principle is also found in the Introduction to Holinshed's Chronicles, written in 1586, where, describing England, it is said: "As for slaves and bondmen, we have none; nay, such is the privilege of our country, by the especial grace of God and bounty of our princes, that, if any come hither from other realms, so soon as they set foot on land they become so free of condition as their masters, whereby all note of servile bondage is utterly removed from them."[1] Such was English law at that early day, according to great authorities. And in the reign of Charles the First the same humanity appeared in literature, when Fuller, describing "the Good Sea-Captain," says, "In taking a prize, he most prizeth the men's lives whom he takes, though some of them may chance to be negroes or savages"; and then, "But our captain counts the image of God nevertheless His image cut in ebony, as if done in ivory."[2]

Other cases followed. In the time of Queen Anne, Lord Chief Justice Holt decided that "as soon as a negro comes into England he becomes free: one may be a villein in England, but not a slave"; and Mr. Justice Powell, his associate, said, "The law takes no notice of a negro,"[3] — in other words, recognizes no difference between him and a white man. As early as 1696, the same eminent Chief Justice, giving judgment in another case, said, "Trover will not lie for a negro."[4]

[1] Holinshed's Chronicles (London, 1807–8), Introduction, Historical Description of Britain, by William Harrison, Book II. ch. 5, Vol. I. p. 275.

[2] Holy and Profane State, Book II. ch. 21

[3] Smith *v.* Brown and Cooper, 2 Salkeld, R., 666.

[4] Chamberlain *v.* Harvey, 1 Lord Raymond, R., 147.

In 1706, in still another case, he said, "The Common Law takes no notice of negroes being different from other men."[1] Lord Campbell, referring to some of these authorities, in his Life of the Chief Justice, says that he "was the first to lay down the doctrine, which was afterwards fully established in the case of Somerset the Negro, that the *status* of Slavery cannot exist in England, and that as soon as a slave breathes the air of England he is free."[2] In 1762, Lord Northington, deciding a case in Chancery where the master claimed the benefit in donation to a negro, said: "As soon as a man puts foot on English ground he is free; a negro may maintain an action against his master for ill usage, and may have a *Habeas Corpus*, if restrained of his liberty."[3] These cases were crowned by the immortal judgment of Lord Mansfield in the Somerset case, where, after elaborate argument at the bar, and protracted adjournments of the court, it was solemnly decided, in 1772, that Slavery "is so odious that nothing can be suffered to support it but *positive law*,"[4] and since no such law could be shown in England, Slavery was impossible there. This case, besides constituting an epoch in the history of Liberty, is memorable for the argument of that learned lawyer, Francis Hargrave, undoubtedly a masterpiece of the English bar. It has been cited so constantly since,[5] that nothing short of the waters of Lethe can account for the forgetfulness of the Chief Justice with regard to it.

[1] Smith *v.* Gould, 2 Lord Raymond, R., 1274.

[2] Lives of the Chief Justices of England, Vol. II. p. 138.

[3] Shanley *v.* Hervey, cited by Hargrave, arguing in the Somerset case: Howell's State Trials, Vol. XX. col. 56.

[4] Ibid., col. 82.

[5] See Brougham's Speeches (Edinburgh, 1838), Vol. II. pp. 6, 631.

Scotland, although having a different jurisprudence, asserted the same principle, side by side with England. Sir Thomas Craig, in his work on Feudal Law, one of the chief monuments of Scottish jurisprudence, testifies that Slavery was unknown in his country in the reign of Queen Elizabeth, when he also flourished, and that there were no laws to regulate it.[1] In 1778, the question was presented to the courts on the claim of a master over a negro and it was found, on appeal, "that the dominion assumed over this negro under the law of Jamaica, being unjust, could not be supported in this country to any extent; that, therefore, the defendant had no right to the negro's service for any space of time, nor to send him out of the country against his consent."[2]

The literature of both countries was in harmony with the jurisprudence. Here I give the words of two Englishmen, John Locke and Samuel Johnson, and two Scotchmen, Adam Smith and David Hume. John Locke portrayed Slavery as "so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation, that it is hardly to be conceived that an Englishman, much less a gentleman, should plead for it."[3] Samuel Johnson exhibited "the planters of America" as "a race of mortals whom no other man wishes to resemble."[4] Adam Smith wrote: "There is not a negro from the coast of Africa who does not, in respect to contempt of death and torture, possess

[1] Cragii Jus Feudale, Lib. I. Dieg. 11, § 32.

[2] Knight *v.* Wedderburn, in note to the Somerset case: Howell's State Trials, Vol. XX. col. 2–7.

[3] Two Treatises of Government, Book I. ch. 1, § 1.

[4] Letter to William Drummond, August 13, 1766: Boswell's Life of Johnson, ed. Croker, (London, 1848,) Vol. III. p. 11.

a degree of magnanimity which the soul of his sordid master is too often scarce capable of conceiving."[1] I quote David Hume at length, because his testimony is less known.

"The remains which are found of Domestic Slavery in the American colonies and among some European nations would never, surely, create a desire of rendering it more universal. The little humanity commonly observed in persons accustomed from their infancy to exercise so great authority over their fellow-creatures, and to trample upon human nature, were sufficient alone to disgust us with that unbounded dominion. Nor can a more probable reason be assigned for the severe, I might say barbarous, manners of ancient times than the practice of domestic slavery, by which every man of rank was rendered a petty tyrant, and educated amidst the flattery, submission, and low debasement of his slaves."[2]

It is not improbable that this passage suggested to Colonel Mason, of Virginia, his condemnation of Slavery, as producing "the most pernicious effect on manners; every master of slaves is born a petty tyrant";[3] and also the remarkable representation by Jefferson of the effect on "manners," when he says, "The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submission on the other."[4]

[1] Theory of Moral Sentiments (Edinburgh, 1808), Part V. ch. 2, Vol. II. p. 34.

[2] Essays, Part II. No. XI.; Of the Populousness of Ancient Nations: Philosophical Works (Edinburgh, 1826), Vol. III. p. 427.

[3] Debates in the Federal Convention, August 22, 1787: Madison Papers, Vol. III. p. 1391.

[4] Notes on Virginia, Query XVIII.

To this increasing testimony, where philosophy and literature unite, against the "axiom" of our Chief Justice, I add that of Granville Sharp, England's earliest Abolitionist, who, more than any other person, was inspired to bear witness. Through his persistent purpose the case of Somerset was presented for hearing and pressed to judgment. The "axiom" was rejected by his life. In 1769, he wrote a tract entitled "A Representation of the Injustice and Dangerous Tendency of tolerating Slavery, or of admitting the least Claim of Private Property in the Persons of Men, in England." Others followed. At the same time he was the watchful guardian of colored persons, offering them friendly protection.

Poetry and eloquence gave expression to the proud declaration of English law. Cowper's "Task" appeared in 1785, with the exulting words, —

> "Slaves cannot breathe in England; if their lungs
> Receive our air, that moment they are free;
> They touch our country and their shackles fall." [1]

Sheridan took up the strain, and in one of his best utterances said: —

"Allegiance to that Power that gives us the *forms* of men commands us to maintain the *rights* of men; and never yet was this truth dismissed from the human heart, — never in any time, in any age, — never in any clime where rude man ever had any social feeling, or where corrupt refinement had subdued all feelings; never was this one unextinguishable truth destroyed from the heart of man, placed as it is in the core and centre of it by his Maker, that man was not made the property of man." [2]

[1] The Task, Book II. 40–42.

[2] Speech on the Trial of Warren Hastings, June 6, 1788: Moore's Memoirs of Sheridan (London, 1825), Vol. I. p. 505.

The same sentiment reappeared in the immortal outburst of Curran, which was the highest testimony to English law. And yet none of these are recognized by our Chief Justice.

In assertion of the general principle, France was not behind England. Schoell, in his "History of Treaties of Peace," referring to this principle, says that in France "the beautiful maxim has always been followed, that whoever sets foot on French soil in Europe is free, — a maxim which, as we have said, the English tribunals did not adopt till 1772."[1] Doubtless the general principle may be traced to an early period of French history. It was a frequent boast, and there are instances of its application. An edict of Louis the Tenth, called *Le Hutin*, or The Quarreller, in 1315, and another of Henry the Second, in 1553, are quoted as declaring the right of all men to liberty by the Law of Nature. At the siege of Metz, in 1552, the Spanish general of cavalry applied to the French commander for the return of a fugitive slave; but the latter replied, that the freedom acquired by the slave, according to the ancient and good custom of France, did not permit his rendition. In 1571, the same principle was maintained against an ambassador, although by the Law of Nations the persons an ambassador brings with him do not change their condition.[2]

These cases are mentioned in the "Causes Célèbres," a well-known French collection of important trials; and the principle is attested by French authorities in

[1] Koch et Schoell, Histoire Abrégée des Traités de Paix, Tom. XI. p. 178.

[2] Causes Célèbres (Paris, 1739-53), Tom. XIII. pp. 502-505: Liberté réclamée par un Nègre contre son maître.

jurisprudence, among which may be named Lebret, and also Loysel, whose works are found in the Library of Congress. I mention especially the "Institutes Coutumières" of Loysel, with the various notes of Laurière, Dupin, and Laboulaye, the last being the very loyal ally of our country, where this principle is stated and illustrated.[1]

The case of the slave at Metz deserves further mention. He had escaped from the besieging general, and taken with him a Spanish horse. The Duke of Guise, who commanded in the city, returned for answer to the application for his surrender, that he could not comply; that his hands were tied by the law of France from time immemorial; that, entirely free as it had been and is, it would not receive a slave: and so it would be, if he were the most barbarous and foreign in the world; having only set foot on the land of France, he is immediately at liberty and beyond all slavery and captivity, and is free as in his own country. The slave could not be returned; but the horse was sent back. The gay and lively Brantôme, who lived for pleasure, was struck by this incident, and, after repeating it "among other beautiful actions," adds: —

"Truly, we must praise and admire that noble freedom, beautiful and Christian, in France, not to admit such servitudes and slaveries, too cruel, and which savor more of the Pagan and Turk than of the Christian."[2]

Bodin, in his work on Government, which first appeared in French in 1576, must be quoted also. I

[1] Institutes Coutumières, Liv. I. § 24, Tom. I. pp. 38–41.

[2] Vies des Hommes Illustres et Grands Capitaines François, Discours LXXVIII.: Œuvres (Paris, 1822–23), Tom. III. p. 184.

copy from the old translation by Knolles, published in 1606.

"But in France, although there be some remembrance of old servitude, yet is it not lawful there to make any slave, or to buy any of others: insomuch that the slaves of strangers, so soon as they set their foot within France, become frank and free; as was by an old decree of the Court of Paris determined against an ambassador of Spain, who had brought a slave with him into France. And I remember that of late a Genoa merchant, having brought with him unto Toulouse a slave whom he had bought in Spain, the host of the house, understanding the matter, persuaded the slave to appeal unto his liberty. The matter being brought before the magistrates, the merchant was called for. The Attorney General out of the records showed certain ancient privileges given (as is said) unto them of Toulouse by Theodosius the Great, wherein he had granted, that slaves, so soon as they came into Toulouse, should be free: the merchant alleging for himself, that he had truly bought his slave in Spain, and so was afterward come to Toulouse, from thence to go home to Genoa, and so not to be bound to the laws of France. In the end, he requested, that, if they would needs deal so hardly with him as to set at liberty another man's slave, yet they should at least restore unto him the money he cost him: whereunto the judges answered, that it was a matter to be considered of. In the mean time, the merchant, fearing lest he should lose both his dutiful slave and his money also, of himself set him at liberty, yet covenanting with him that he should serve him so long as he lived."[1]

Nor was the principle restricted in application to persons of a white skin. The fugitive slave at Metz

[1] Commonweal, tr. Knolles, Book I. ch. 5, p. 42.

was a Moor or Turk. And there are other cases. In 1571, a merchant of Normandy brought to Bordeaux several Moors for sale; but the Parliament of Guienne, by a solemn decree, discharged them from slavery, "because France, the mother of Liberty, does not permit any slaves." Another case occurred in the reign of Henry the Third, who, notwithstanding the remonstrances of the Spanish ambassador, refused to surrender two or three hundred "Turks, Moors, and Barbarians" who had escaped from a Spanish galley, but sent them all to Constantinople, each with a crown-piece in his pocket. These cases also appear in the authoritative pages to which I have already referred.[1]

That the African was no exception to the prevailing principle in its original vigor appears in subsequent cases. Unhappily, Slavery, exiled from France, found a home in the French colonies, and then succeeded in obtaining certain privileges even in France. By the Edict of 1716 and the supplementary Declaration of 1738, the rights of the master over his slave in France were recognized in certain cases. A slave escaping from the colonies was surrendered, and the officers of the Admiralty, and others whom it concerned, were enjoined to assist the master in his recovery; but where a master voluntarily brought or sent a slave into France, he was obliged first to obtain permission from the colonial governor, and register the same both at his place of residence and the port of disembarkation. With these considerable limitations the great rule of France prevailed. The master was not permitted to sell or exchange his slave in France;

[1] Causes Célèbres, Tom. XIII. pp. 549, 550.

nor could he hold him, if he had failed to comply with the required formalities.[1]

In 1738, the liberty of a slave brought from San Domingo, and without compliance with prescribed formalities, was recognized after an elaborate hearing by the Admiralty. The general principle was presented with much force. One of the counsel exclaimed: "In France there are no slaves; and the custom is such that not only Frenchmen, but also foreigners entering a port of France, and crying, '*France and Liberty!*' are out of the power of him who possessed them, who loses the purchase-money and the service of the slave, if the slave refuse to serve him."[2] This case, which testifies against our Chief Justice, is found in a French collection of Celebrated Trials, and there is a full abstract of it in the notes to the case of Somerset in Howell's edition of the State Trials.[3]

In 1776, there was a case, entitled "A Negro and a Negress who claimed their liberty against a Jew,"[4] where, after elaborate hearing, the Admiralty decreed the liberty of the claimants. Here also, while insisting upon failure to comply with the prescribed formalities, the original rule of France was eloquently declared. The counsel of the slaves began by saying: "Two slaves have had the happiness to land in France; they have heard that the air breathed here is that of Liberty." Proceeding in his argument, the counsel refutes the Dred Scott decision. "Those,"

[1] Recueil d'Édits, etc., concernant l'Administration de la Justice et la Police des Colonies Françaises de l'Amérique (Paris, 1765), pp. 67, 89, 128.

[2] Causes Célèbres, Tom. XIII. p. 549.

[3] Vol. XX. col. 12–16, note.

[4] Un Nègre et une Négresse qui réclamoient leur liberté contre un Juif: Causes Célèbres (Paris, 1775–87), Tom. XXXVI. pp. 49–110.

said he, "who have thought to perceive a natural imprint of servitude on the countenances of certain people, instead of consulting reason, have taken for guide only the prejudices engendered by vanity and pride. Had they listened in silence to the powerful voice which cries at the bottom of the heart of all men, their own heart would have contradicted the error of the mind. They would then have recognized that daring to pretend that all men are not born free is to calumniate Nature."[1]

In these cases there was an evident disposition to follow the teachings of Justice and Humanity. In another case, finally decided in 1759, it was suggested, that, even where the prescribed formalities had been complied with, the great rule of Liberty was not restricted, inasmuch as the Code Noir had never been registered in the Parliament of Paris. On appeal to this Parliament, the highest tribunal of France, the slave was ordered to be set free; upon which counsel, quoting the case, observed: "This decree attests that the jurisprudence of the Parliament of Paris is favorable to Liberty."[2]

Thus far I have adduced only the jurisprudence of France. But French literature also cries out. The famous Encyclopædia, edited by those leaders of thought, Diderot and D'Alembert, in the middle of the last century, says at the end of an elaborate article on Slavery: "We conclude that Slavery, founded by force, by violence, and in certain climates by excess of servitude,

[1] Un Nègre et une Négresse, etc.: Causes Célèbres, Tom. XXXVI. pp. 50, 51, 66.

[2] Ibid., pp. 82, 83.

cannot perpetuate itself in the universe but by the same means."[1] Almost contemporaneously, Montesquieu, in his "Spirit of Laws," exposed with admirable irony the wrongs of the African. "It is impossible," says the philosopher, "that we should suppose that these people are men; because, if we supposed them men, people would begin to think that we ourselves were not Christians."[2]

No Abolitionist of our day has denounced Slavery with more power, or vindicated the rights of the African with more sympathy, than Condorcet. In his notes to the "*Pensées*" of Pascal, which appeared in 1776, and gave such satisfaction to Voltaire, he steps aside to declare: —

"And let it not be said, that, in suppressing Slavery, Government would violate the property of the colonists. How could usage, or even a positive law, ever give a man a true right of property in the labor, in the liberty, in the entire being of another innocent man who had never consented to it? In declaring the negroes free, we should not take from the colonist his property, — we should prevent him from committing a crime; and the money paid for a crime has never given the right to commit it."

Then, in reply to those who charge the negroes with vices, he says indignantly: —

"Make them free, and nearer Nature than yourselves, they will be superior to you."[3]

So does the French philosopher testify against the Chief Justice.

[1] Encyclopédie (Paris, 1751–72), art. *Esclavage*, Tom. V. p. 939.

[2] De l'Esprit des Lois, Liv. XV. ch. 5.

[3] Remarques sur les Pensées de Pascal: Œuvres de Condorcet, par O'Connor et Arago, Tom. III. p. 650.

Strange that the Chief Justice, forgetting the jurisprudence and literature of France, forgot also the brilliant testimony of Lafayette, who, communicating to Congress at Philadelphia the great news that the Treaty with England acknowledging our Independence was signed, wrote by the same packet, and under the same date, February 5, 1783,[1] to Washington, calling upon the commander of our armies to unite with him in the purchase of a small property, where they might make the experiment of emancipating the negroes, and of employing them simply as farm laborers. Although Washington failed to unite with his French friend, the appeal exists as testimony against the Chief Justice. There is also the letter of Lafayette to Hamilton, April 13, 1785, asking to be enrolled in what he calls the "Association against the Slavery of Negroes," in New York, and declaring that he has ever been "partial to his brethren of that color."[2] This should have been remembered by the Chief Justice.

From France I pass to Holland, including Belgium. Here an authority so familiar as Bynkershoek tells us that the Belgians, capturing Algerines, Tunisians, and Tripolitans, on the ocean or in the Mediterranean, are accustomed to sell them into Slavery in Spain; "for the Belgians themselves have no slaves except in Asia, Africa, and America."[3] Like France, the country at home was free, and Slavery was exiled to the colonies. The efficacy of this rule is curiously attested by an incident recorded by Diderot, the Frenchman

[1] See, *ante*, Lecture on Lafayette, Vol. V. pp. 392, 398.

[2] Ibid., p. 398.

[3] "Nam ipsi Belgæ servos non habent, nisi in Asia, Africa, et America." — *Quæstiones Juris Publici*, Lib. I. cap. 3.

so eminent in science and literature, and of universal knowledge. It is in his Tour in Holland, made in 1773. It is well known that Peter of Russia, called the Great, served as a shipwright in the docks of Holland. Afterwards visiting the country as Czar, he was attracted by the apparatus for execution, but, not comprehending its operation clearly, he said, "It is only necessary to take one of my slaves, and try it on him." It was represented, that, besides the revolting atrocity of this act, it would not be possible to allow it. "Ah! why not?" said the Czar. "Am I not master of my slave, and can I not dispose of him at my will?" "In your own country, perhaps," replied the burgomaster, "but not here. Every slave who sets foot in Holland becomes free there, and belongs only to himself."[1] This visit of the Czar was early in the last century, though recorded by Diderot later, and then Holland was already ranged with countries that would not tolerate Slavery; but the Chief Justice remembers not the testimony.

Spain also cries out against the Chief Justice. Her favorite monarch, Isabella, was aroused against the discoverer of the New World at the report that slaves from the Indies had been introduced into Spain with his sanction, and she exclaimed, "By what authority does Columbus venture thus to dispose of my subjects?" Instant proclamation was made by her order, that all who had Indian slaves in their possession, granted by the Admiral, should forthwith provide for their return to their own country, while the few held by the Crown

[1] Voyage de Hollande, 1773: Œuvres de Diderot (Paris, 1821), Tom. XXI. p. 294.

were restored to freedom in like manner. Las Casas records, that, "so great was the Queen's indignation at the Admiral's misconduct in this particular, that nothing but the consideration of his great public services saved him from immediate disgrace."[1] Whatever the legislation and jurisprudence of Spain, this historic incident must not be forgotten. It was the voice of the sovereign, and therefore, for the time, the voice of the nation.

There are other eminent Spaniards to be included in the cloud of witnesses, especially Las Casas, whose story I give on the authority of our own historian, just quoted, whose works were in every library of the country when the Chief Justice launched his decree: I mean my much valued friend, the late William H. Prescott. In his "History of the Conquest of Mexico" is a description of the good Bishop, who, to relieve the Indian natives from slavery in the islands of the West Indies, proposed the introduction of Africans, and in an evil hour his advice was followed. At a later period he regretted keenly the wrong he had done, since, to use his own words, "the same law applies equally to the Negro and the Indian." Afterwards, at a hearing before the Emperor, Charles the Fifth, he denounced Slavery in words of fervid eloquence, worthy of any Abolitionist, saying: "The Christian religion is equal in its operation, and is accommodated to every nation on the globe. It robs no one of his freedom, violates none of his inherent rights, on the ground that he is a slave by nature, as pretended; and it well becomes your Majesty to banish

[1] Prescott, History of the Reign of Ferdinand and Isabella, Vol. II. pp. 471, 472.

so monstrous an oppression from your kingdoms in the beginning of your reign, that the Almighty may make it long and glorious."[1] In an elaborate memorial prepared in 1542, the same upright churchman denounces Slavery, saying, "God forbids us to do evil that good may come of it"; and the historian adds, "The whole argument, which comprehends the sum of what has been since said more diffusely in defence of Abolition, is singularly acute and cogent."[2] But the Chief Justice forgot all these things.

And he forgot also the dying testimony of Cortés, the conqueror of Mexico, who, in his testament, revealed his anxieties as a slave-master, in the following direction to his son: "It has long been a question, whether one can conscientiously hold property in Indian slaves. Since this point has not yet been determined, I enjoin it on my son Martin and his heirs, that they spare no pains to come to an exact knowledge of the truth, as a matter which deeply concerns the conscience of each of them, no less than mine." The historian from whom I copy this passage adds: "The state of opinion in respect to the great question of Slavery in the sixteenth century, at the commencement of the system, bears some resemblance to that which exists in our time, when we may hope it is approaching its conclusion. Las Casas and the Dominicans of the former age, the Abolitionists of their day, thundered out their uncompromising invectives against the system, on the broad ground of natural equity and the rights of man."[3]

[1] Prescott, History of the Conquest of Mexico, Vol. I. p. 379.

[2] Ibid., History of the Reign of Ferdinand and Isabella, Vol. III. p. 476, note.

[3] Ibid., History of the Conquest of Mexico, Vol. III. pp. 345, 346.

Thus in advance did the historian answer the Chief Justice.

Associated with Las Casas in lofty truth was the Dominican, Dominic Soto, the confessor of Charles the Fifth, and the oracle of the Council of Trent, to whom, it is said, that assembly was indebted for much of the precision, and even elegance, recognized in its doctrinal decrees. His Treatise on Justice and Law is not unknown to students of philosophy, and it has been commended by Sir James Mackintosh, who rejoices in bringing forward the remarkable testimony it furnishes against Slavery. "It is affirmed," says the Dominican, "that the unhappy Ethiopians are by fraud or force carried away and sold as slaves. If this is true, neither those who have taken them, nor those who purchased them, nor those who hold them in bondage can ever have a quiet conscience, till they emancipate them, *even if no compensation should be obtained.*"[1] This testimony has not been left to slumber in the Latin text of the author. I take it from a favorite production in our own language. Not content with quoting it, Mackintosh adds: "As the work which contains this memorable condemnation of Man-Stealing and Slavery was the substance of lectures for many years delivered at Salamanca, Philosophy and Religion appear, by the hand of their faithful minister, to have thus smitten the monsters in their earliest infancy."[2] But the Chief Justice ignored all this.

Nor is Portugal to be omitted in this catalogue; and here the testimony is from a familiar authority, be-

[1] Soto, De Justitia et Jure, Lib. IV. Quæst. 2, Art. 2.

[2] Dissertation on the Progress of Ethical Philosophy, Sec. 3: Miscellaneous Works (London, 1851), p. 24.

ing none other than the History of Brazil, by Robert Southey. In this elaborate work, the author, an English classic of the present century, dwells on the unsurpassed eloquence of the Father Vieyra, in the early settlement of Brazil, while he denounced Slavery. No modern Abolitionist has ever used stronger language. Born at Lisbon, in 1608, and dying at Bahia, in 1697, he was called by his countrymen "the last of the mediæval preachers," and is the most celebrated of Portuguese divines. Thus he spoke: "Oh, what a market! a negro for a soul, and the soul the blacker of the two! 'This negro shall be your slave for the few days that you may have to live, and your soul shall be my slave through all eternity, as long as God is God!' — this is the bargain which the Devil makes with you." Then again the fierce orator said: "My brethren, if there be any who doubt upon this matter, here are the laws, here are the lawyers; let the question be asked. . . . . Go to Turkey, go to Hell: for there can neither be Turk so beturked in Turkey, nor Devil so bedevilled in Hell, as to affirm that a free man may be a slave. . . . . We ought to support ourselves with our own hands; for better is it to be supported by the sweat of one's own brow than by another's blood. O ye riches of Maranham! What if these mantles and cloaks were to be wrung? They would drop blood!"[1] Surely here is testimony worthy of memory; but our Chief Justice knew it not.

Nor has he regarded official acts by which Portugal at an early day set herself against Slavery. The years

[1] Southey, History of Brazil (London, 1810–19), Vol. II. ch. 26, pp. 476, 479.

1570, 1587, 1595, 1661, and 1680 were marked by Portuguese to secure the liberty of native Indians. At a later day, but anterior to our Constitution, the African began to feel the same recognition. On the 19th September, 1761, it was enacted, that "all black slaves who should henceforward come to the ports of the kingdom of Portugal and Algarve from Africa or America should be free"; and this was followed by royal order of the 2d January, 1767, extending "this beneficent measure to mulattoes of both sexes who were not mentioned in preceding laws." Then came the law of 16th January, 1773, which determined that "the children of male and female slaves, who might be born in the kingdom of Portugal after the above date, should be free, and *capable of holding office, honors, and dignities,* without the stigma of freedmen, which the superstition of the Romans established in their customs, and which Christian union and civil society now render intolerable in the kingdom." These important facts I have from the Portuguese Legation at Washington. Note, if you please, the dates; yet the Chief Justice knew nothing of this important and honorable testimony.

The evidence may well be closed with Italy and the Catholic Church. Surely Bancroft's History of the United States should have taught the Chief Justice at least to hesitate. In his learned chapter on Slavery the historian records, that, "by the Venetian law, no slave might enter a Venetian ship, and to tread the deck of an argosy of Venice became the privilege and the evidence of freedom." Then, again, the Chief Justice might have learned from him, that

in the twelfth century Pope Alexander the Third became the guardian of the oppressed, and wrote: "But since Nature created all free, no one by condition of Nature was subjected to slavery"; and he might have learned also how even Pope Leo the Tenth, in the midst of his luxurious life, making his pontificate a carnival, declared that "not the Christian religion only, but Nature herself, cries out against the state of Slavery."[1]

But how could our Chief Justice, belonging and faithful to the Roman Church, forget the testimony of that Church as presented by Balmés, the remarkable Spanish writer, in his work entitled "Protestantism and Catholicity compared in their Effects on the Civilization of Europe"? Here is found an eloquent vindication of the Church, which, according to its defender, rejected the assumptions of the Chief Justice. The famous bull against the slave-trade by Gregory the Sixteenth, in 1839, sets forth what was done to this end by Paul the Third in 1537, by Urban the Eighth in 1639, and by Benedict the Fourteenth in 1741, casting "the most severe censures upon those who venture to reduce the inhabitants of the East or West Indies into slavery, buy, sell, give, or exchange them, separate them from their wives and children, strip them of their property, take or send them into strange places, or deprive them of their liberty in any way, to retain them in slavery, or aid, counsel, succor, or favor those who do these things under any color or pretence whatever, or preach or teach that this is lawful, and, in fine, coöperate therewith in any

[1] Bancroft, History of the United States, Vol. I. pp. 163, 172.

way whatever."[1] But, in face of this arraignment by successive pontiffs, where is the Chief Justice? Thus does his own Church testify against him.

Here I suspend the testimony, leaving several famous countries unvisited. But there is enough for conviction; nor is argument needed. The witnesses are before you, excellent and unanswerable, in long array, — witnesses from our own country, witnesses from England, witnesses from Scotland, witnesses from France, witnesses from Holland, witnesses from Spain, witnesses from Portugal, witnesses from Italy, witnesses from the Catholic Church, all rising up to testify against that "opinion" which the Chief Justice announces as "fixed and universal in the civilized portion of the white race," — against that "axiom in morals as well as in politics" which he says "no one thought of disputing, or supposed to be open to dispute." They rejected his "opinion"; they disputed his "axiom." Did he forget? or, for the sake of Slavery, did he pervert judgment? But such forgetfulness was akin to such perversion. And when it is considered that this was to put Slavery in the National Constitution, it was nothing less than a criminal falsification; nor should ignorance be an excuse.

Plainly, the Chief Justice who could do this deserves no marble bust by vote of Congress. His comprehensive office was Justice; his special duty was Liberty. But these he sacrificed, making Law and Constitution hideous. The old maxim of Law cries out against him: *Impius et crudelis judicandus est,*

[1] Balmés, Protestantism and Catholicity (London, 1849), Note XV. § 7, p. 378.

qui Libertati non favet. Such is the terrible judgment. Again the Law speaks: *Execrandus est, qui Libertati non favet:* "Accursed is he who does not favor Liberty." This is the ancient voice of the Law, older than Constitution and Declaration of Independence, which must not be disobeyed.

NO RECONSTRUCTION WITHOUT THE VOTES OF THE BLACKS.

Remarks in the Senate on the Resolution admitting the new State Government of Louisiana, February 24, 25, and 27, 1865.

February 16th, Mr. Trumbull, of Illinois, Chairman of the Committee on the Judiciary, reported the following resolution, which, at the request of Mr. Sumner, was read: —

"Resolved, &c., That the United States do hereby recognize the Government of the State of Louisiana, inaugurated under and by the Convention which assembled on the 6th day of April, A. D. 1864, at the city of New Orleans, as the legitimate Government of the said State, and entitled to the guarantees and all other rights of a State Government under the Constitution of the United States."

The admission of the State, as here proposed, had the favor of President Lincoln. It was earnestly opposed by Mr. Sumner as not republican in origin or form, and furnishing no security for the rights of colored persons.

February 23d, on motion of Mr. Trumbull, the Senate proceeded to consider the resolution, when Mr. Sumner moved the following substitute: —

"That neither the people nor the Legislature of any State, the people of which were declared to be in insurrection against the United States by the Proclamation of the President, dated August 16, 1861, shall hereafter elect Representatives or Senators to the Congress of the United States, until the President, by proclamation, shall have declared that armed hostility to the Government of the United States within such State has ceased, nor until the people of such State shall have adopted a Constitution of Government not repugnant to the Constitution and laws of the United States, nor until, by a law of Congress, such State shall have been declared to be entitled to representation in the Congress of the United States of America."

This was lost. — Yeas 8, Nays 29.

February 24th, Mr. Lane, of Kansas, moved that the resolution be made the special order for the next day at one o'clock. In the debate on this motion the following colloquy occurred.

Mr. Sumner. If we are to make any special order for to-morrow, I think it should be the bill which the Senate has most maturely considered, and on which it is most prepared to vote, known as the Railroad Bill, in charge of my friend from Michigan [Mr. Chandler]. The Senator from Illinois [Mr. Trumbull] came forward with his measure ——

Mr. Conness. Will my friend permit me — I know he will — to appeal to him not to waste the fifteen minutes we have left in discussing the order of business, but let us take a vote? . . . .

Several Senators (to Mr. Sumner). Give up.

Mr. Sumner. Senators say, "Give up." That is not my habit.

Mr. Conness. We know that. [*Laughter.*]

Mr. Lane (of Kansas). Will the Senator from Massachusetts permit me to withdraw my motion?

Mr. Sumner. If the motion is withdrawn, I have nothing further to say.

Mr. Lane. I withdraw the motion.

The motion to postpone was not pressed, and the resolution came up in regular order. After an elaborate speech against it by Mr. Powell, of Kentucky, Mr. Howard, of Michigan, obtained the floor, when his colleague, Mr. Chandler, moved to proceed with the bill to regulate commerce among the States, known as the Railroad Bill. In the debate that ensued, Mr. Sumner spoke of the latter bill as "a reality," and called the resolution "a shadow." Mr. Doolittle, of Wisconsin, vindicated the resolution as "the great measure of this Congress," and said, "It is not for the Senator from Massachusetts, with all his boastful friendship for Freedom and free States, to join hands with the Senator from Kentucky, and undertake to prevent the recognition of the free State of Louisiana." In reply, Mr. Sumner said: —

THIS measure, I say, Sir, is a shadow. So far as it is calculated to exercise any influence, it is to bring disaster. Sir, I do not stand here as a prophet, and I will not at this moment, on this incidental question, be carried into debate; but I warn the Senator from Wisconsin, as he loves Human Freedom, ay, Sir, as he represents a State dedicated to Freedom, to hesitate, before he throws his influence on the side of such a proposition, opening the way to an ominous future.

Sir, I am not disposed to go on, and yet there is one other remark of the Senator to which I must reply. The Senator insists constantly upon foisting an unconstitutional idea in the way of establishing Emancipation throughout this country. He says the vote of Louisiana is needed to the Constitutional Amendment. Sir, the vote of Louisiana is not needed; and when the Senator makes the assertion, he interposes an obstacle to the Amendment. Is he a friend to it? Why, then, interpose an obstacle by an untenable and erroneous interpretation of the Constitution? The Constitution declares that an Amendment shall become to all intents and purposes a part of the Constitution, when ratified by the Legislatures of three fourths of the States.

Mr. Doolittle. "When ratified by the Legislatures of three fourths of the several States."

Mr. Sumner. Very well, — "when ratified by the Legislatures of three fourths of the several States"; but if no Legislatures exist in States, will the Senator make that an excuse for avoiding the establishment of the Amendment? I will not recognize the Rebellion to such extent; I will not recognize the independence of the Rebel States, as the Senator does. I insist, Sir, that these States shall not control the National Government at this moment, in this great period of our history, and thwart the establishment of human freedom throughout the land.

After remarks from other Senators, the motion to take up the Railroad Bill was lost, — Yeas 10, Nays 25. Mr. Henderson, of Missouri, made an elaborate speech in favor of the admission, claiming that its Constitution was republican in form, in the course of which the following colloquy occurred.

Mr. Henderson. The Senator from Kentucky thinks the Constitution of Louisiana is the offspring of military usurpation, but he does not say that the Constitution itself is antirepublican.

Mr. Sumner. I do.

Mr. Henderson. You do?

Mr. Sumner. Certainly.

Mr. Henderson. In what particular? Mr. President, I have been in the Senate for nearly four years, and I believe now candidly that the Rebellion is about at an end, and, if there were no other evidence of it, that evidence would be presented to-night in the close alliance and affiliation of my friend from Massachusetts and my friend from Kentucky. Truly, the lion and the lamb have lain down together.

Mr. Johnson (of Maryland). Who is the lion, and who is the lamb?

Mr. Henderson. That is for the gentlemen themselves to settle. [*Laughter.*] The Senator from Massachusetts says that these State Constitutions are not republican in form. Will he tell me in what respect?

Mr. Sumner. Because they do not follow out the principles of the Constitution of the United States.

Mr. Henderson. I should like to know in what particular. The answer is a very general one, indeed. He refuses, then, to specify. The Senator can answer more particularly hereafter, if he chooses. He says these Constitutions do not follow the Constitution of the United States. I have looked over them, and I find no objection to them. . . . . The Senator from Massachusetts says the act of secession took the States out. In the name of sense, cannot the act of the loyal men bring them back? . . . .

Mr. Sumner. Does the Senator refer to me as having ever said that the act of secession took a State out?

Mr. Henderson. I understand the Senator to claim that these States are in a territorial condition, — that they are not States, — that, by losing their State Governments in the act of secession, they lose their specific identity as States.

Mr. Sumner. I would rather the Senator should use my language than his own, when he undertakes to state my position. I have never said that any act of secession took a State out. I have always said just the contrary. No act of secession can take a State out of this Union. Whatever may be attempted, the State continues under the Constitution of the United States, subject to all its requirements and behests. The Government of the State is subverted by secession; the Senator does not recognize the existing Government as legal or constitutional, any more than I do. Where, then, is the difference between us? There is no Government which he or I recognize; but we do hold that the whole region, the whole territory, is under the Constitution, to be protected and governed by it.

Mr. Henderson. The Senator, then, admits that the States are in the Union. Now I ask him if we can restore the Union without restoring State Governments in the seceded States.

Mr. Sumner. That is the desire I have most at heart. I wish to restore State Governments in those States.

MR. HENDERSON. Then I desire to ask the Senator, if the loyal men in one of those States acquiesce in the Constitution presented here, are they not entitled to govern the State under it?

MR. SUMNER. *If the loyal men, white and black, recognize it, then it will be republican in form. Unless that is done, it will not be.*

MR. HENDERSON. Now, Mr. President, I desire to ask the Senator if the Congress of the United States can interfere with the right of suffrage in one of the American States of this Union. I put the question to him as a constitutional lawyer.

MR. SUMNER. I answer at once, as a constitutional lawyer, that at the present time, under the words of the Constitution of the United States, declaring that the United States shall guaranty to every State a republican form of government, it is the bounden duty of the United States by Act of Congress to guaranty complete freedom to every citizen, immunity from all oppression, and absolute equality before the law. No Government failing to guaranty these things can be recognized as republican in form, when the United States are called to enforce the constitutional guaranty.

In the course of the speech of Mr. Henderson, this further colloquy occurred.

MR. HENDERSON. To secure national supremacy, you must have the aid of State authority. For legitimate State authority you must rely upon the *loyal voters.*

MR. SUMNER. *There is where I agree precisely with the Senator; and I should like to hold him to it.* He says the loyal men must form the Government, and we should recognize that Government; and yet he insists upon a mere oligarchy forming it, and an oligarchy of the skin.

MR. HENDERSON. The Senator says he agrees with me in my position, but insists that I am in favor of an oligarchy. If I am in favor of an oligarchy, and he agrees with me, then he also wants an oligarchy. [*Laughter.*]

MR. SUMNER. The Senator plays upon words.

Mr. Henderson continued at length, answering various objections to the Louisiana State Government on account of irregularity in the proceedings. Upon his statement that the failure of the Rebels to vote did not harm the great principles of Republicanism, the follow-lowing passage occurred.

MR. SUMNER. It was the failure of loyal citizens to vote that did the damage.

MR. HENDERSON. I answer that by asking, What loyal men did General Banks prevent from voting?

MR. SUMNER. *All the colored race.*

At a late hour Mr. Henderson concluded, and the Senate adjourned.

February 25th, the Senate proceeded with the resolution, when Mr. Sumner sent to the Chair resolutions which he proposed to offer as a

substitute, declaring the duty of the States to guaranty republican governments in the Rebel States on the basis of the Declaration of Independence, — being the next article in this volume.

Mr. Howard, of Michigan, made an elaborate speech against the resolution, and Mr. Reverdy Johnson, of Maryland, for it. The latter asked: "Are these States to be governed as provinces? That is the idea of the honorable member from Massachusetts. . . . . Will the honorable member deny that it would be in the power of Massachusetts now to exclude the black? I suppose not; and yet, if by an Act of Congress you place it out of the power of the seceded States, when they come back, under the authority of that Act, to change the qualifications of electors, they will not come back as the equals of Massachusetts." Then ensued a colloquy.

MR. SUMNER. Allow me to ask the Senator, whether, in his opinion, the Ordinance governing the Northwest Territory, prohibiting Slavery, and declared to be a perpetual compact, could be set aside by any one of the States formed out of the Territory now.

MR. JOHNSON. I certainly think they can, except so far as rights are vested.

MR. SUMNER. The Senator, then, thinks Ohio can enslave a fellow-man?

MR. JOHNSON. Just as much as Massachusetts can.

MR. SUMNER. Massachusetts cannot.

MR. JOHNSON. Why not?

MR. SUMNER. Massachusetts cannot do an act of injustice.

MR. JOHNSON. Oh, indeed! I did not know that. [*Laughter.*]

MR. SUMNER. The Senator ought to know it.

MR. JOHNSON. I do not think that is in the Constitution.

MR. SUMNER. I beg the Senator's pardon; it is in the Constitution.

MR. JOHNSON. The United States Constitution, or your State Constitution?

MR. SUMNER. Yes, Sir, — in our State Constitution.

MR JOHNSON. But it is not in the constitution of your people. You sometimes do, or have done, acts of injustice. What I mean to say is this, — and I am sure the honorable member will not be able successfully to controvert it, certainly not by authority, — that there is no difference between the State of Massachusetts and any other State in the Union with reference to its State powers. That is what I mean to say.

MR. SUMNER. I mean to say that the State of Massachusetts has no power to do an act of wrong, — no power constitutionally, morally, politically, or in any way.

MR. JOHNSON. What is an act of wrong? Who is to judge of it?

MR. SUMNER. To enslave a fellow-man.

MR. JOHNSON. You had them there.

MR. SUMNER. Not since the Constitution.

Afterwards came the following question and answer.

Mr. Sumner. Does the Senator from Maryland, who now calls in question the validity of the Proclamation of Emancipation, question that the Supreme Court of the United States, with its present Chief Justice, would affirm the complete validity of that Proclamation everywhere within the Rebel States strictly according to its letter?

Mr. Johnson. If I am perfectly satisfied, as I am, that the Chief Justice is abundantly capable of filling the high office he has, I do not think he would; but whether he would or not does not settle the question, what the Court would do. He is but one of ten.

At the close of Mr. Johnson's speech, Mr. Sumner offered the following proviso, to come at the end of the resolution: —

"*Provided*, That this shall not take effect, except upon the fundamental condition that within the State there shall be no denial of the electoral franchise, or of any other rights, on account of color or race, but all persons shall be equal before the law. And the Legislature of the State, by a solemn public act, shall declare the assent of the State to this fundamental condition, and shall transmit to the President of the United States an authentic copy of such assent, whenever the same shall be adopted; upon the receipt whereof, he shall, by proclamation, announce the fact; whereupon, without any further proceedings on the part of Congress, this joint resolution shall take effect."

Mr. Sumner remarked, that he desired to call attention to the precedent on which this proviso was modelled, and he was induced to do so from the very elaborate way in which Mr. Johnson had seemed to anticipate it. He has announced that it would be futile; but those who preceded us did not think so; and Mr. Sumner then read the resolution for the admission of Missouri into the Union on a certain condition, where is a proviso, as he insisted, similar in character.

Mr. Henderson moved to amend the proviso by inserting after the word "race" the words "or sex." Meanwhile occurred a desultory debate, in which the proviso was opposed by Mr. Henderson and Mr. Johnson, — also by Mr. Pomeroy, of Kansas. The latter said: "I usually vote for everything that the Senator from Massachusetts brings forward on the Antislavery question; but I am opposed to this amendment, — in the first place, because I do not suppose that we have the right to say what shall be the qualifications of voters in any State in the Union. . . . . I shall vote against all amendments that look like dictation on the part of Congress to any State, whether they will let the right of suffrage be enjoyed by a whole or a part of the people."

After some time, Mr. Wade, of Ohio, remarked, that it had "got now to be pretty late in the evening," and he moved that the resolution be postponed till the first Monday in December next. While this was pending, Mr. Wilson, of Massachusetts, moved an adjournment, which was lost, — Yeas 11, Nays not counted. After debate, the question was put on the motion of Mr. Wade, which was lost, — Yeas 12, Nays 17. Mr. Howard, of Michigan, then moved an adjournment, which was lost, — Yeas 12, Nays 19. Mr. Howard then moved that the whole subject be laid on the table, which was lost, — Yeas 12, Nays 18.

Mr. Sumner. I agree with the Senator from Michigan in the impropriety of pressing a measure of this importance. Perhaps it is the most important measure we have had before us. I shall regard its passage as a national calamity. It will be the political Bull Run of this Administration, sacrificing a great cause and the great destinies of the Republic. I will not go into debate at this time. I think the Senate is not in a condition to vote finally upon it. There are many who would unquestionably like to record their names upon it who are not here. We ought to give them an opportunity. We ought also to give an opportunity for further discussion. It never has been the habit of the Senate, except in those days which we ought not to imitate, ——

Mr. Foster (of Connecticut). Will the honorable Senator allow me to ask him a question?

Mr. Sumner. Certainly.

Mr. Foster. I will ask the honorable Senator if he is not fully prepared to vote on the question.

Mr. Sumner. I certainly am prepared to vote on it.

Mr. Foster. I will merely say I am.

Mr. Sumner. . . . . I think, on his account, it would

be well that the question should be postponed for another day. It is never too late to mend; and it is not impossible that even the Senator, coming from New England, representing, as I doubt not he does, liberal ideas, devoted as he must be to the cause of Human Freedom and of his country, may think there is something in this question to justify the most mature consideration, — something on which the Senate ought to deliberate carefully, without rushing precipitately to a vote. Sir, this question ought not to be closed to-night, and I therefore move an adjournment; and on that I ask for the yeas and nays.

The motion was lost, — Yeas 11, Nays 18.

Mr. Trumbull then appealed for a vote, saying: "The Senator from Massachusetts has fought it day after day to prevent it coming up; and when a large majority of the Senate has overruled him time and again, and decided that it should come up, he stands here, at half after ten o'clock on Saturday night, making dilatory motions." He also protested against what he called "manifestations of a determination to browbeat the Senate on the part of a minority." Mr. Sumner followed.

THE Senator from Illinois draws upon his imagination, which, on this occasion, is peculiarly lively. I know not that anybody has undertaken to browbeat. Certainly nobody on the side with which I am associated has done any such thing, or, I believe, imagined doing it.

MR. TRUMBULL. I heard it said that there should be no vote to-night.

MR. SUMNER. Well, Sir, is that browbeating?

MR. TRUMBULL. I think it is undertaking to decide for the Senate.

Mr. Sumner. Is that browbeating? No, Sir; it is only undertaking to decide the conduct of an individual Senator with regard to an important public measure. The question between the Senator from Illinois and myself is simply this: he wishes to pass the measure, and I do not wish to pass it. He thinks the measure innocent; I think it dangerous, and, thinking it dangerous, I am justified in opposing it, and in employing all the means to be found in our arsenal. But, Sir, I mean to employ them properly and in a parliamentary way. In no other way can I act in this Chamber.

The Senator is entirely mistaken, if he supposes that this measure can be passed to-night. I tell him it cannot. Parliamentary Law is against him; and the importance of the question justifies a resort to every instrument that Parliamentary Law supplies. The Senator knows it well. I need not even suggest it.

And now, Sir, I have to counsel the Senator, — perhaps he would say that I am taking too great a liberty, and even dictating, — but I would first advise the Senator to look at the clock. He will see that on this evening of Saturday it is twenty-five minutes of eleven, — that it is approaching Sunday. Then let him remember that we have been here all day, and ask himself whether, all things considered, it is advisable to press such a revolutionary measure after this protracted session, and at this late hour. I think his better judgment will come to the conclusion that it is not. At any rate, should he not come to that conclusion, I think he will make a mistake, and all his efforts will be fruitless. There is a certain character of Antiquity who was found sowing salt in the sand by the sea-shore, and ploughing

it in. The Senator will be engaged in an occupation just about as profitable.

Mr. Davis, of Kentucky, then moved a call of the Senate, which being ruled out of order, as never entertained by the Senate, Mr. Sumner moved an adjournment, which was lost, — Yeas 8, Nays 19. In the desultory debate that ensued, Mr. Doolittle, of Wisconsin, criticized Mr. Sumner, who replied. Mr. Hendricks, of Indiana, followed, and, in the course of his remarks, said : " The question is, What is to be done with the four million negroes, when they are set free ? There are Senators upon the Republican side who feel that it is a very troublesome question. That is the trouble here to-night. . . . . The Senator from Massachusetts is determined that none of these States shall ever be heard in the Halls of Congress, until the men who speak from those States speak the voice of the negroes as well as of the white men. Other Senators say that shall not be. We Democrats are a unit upon that question." On motion of Mr. Lane, of Kansas, the Senate adjourned shortly before midnight, leaving the resolution pending.

February 27th, the resolution came up in regular order, when Mr. Sherman moved to proceed with the Internal Revenue Bill, and then called attention to the Indian Appropriation Bill, the Civil Appropriation Bill, the Tariff Bill, also the Army and Navy Appropriation Bills, all of which must be considered before March 4th, when the session closed. In the debate that followed, Mr. Sumner said : —

Mr. President, — I remember that good fortune last summer threw me in the path of a distinguished gentleman just returned from Louisiana. I think he had been present at the sittings of the Convention whose work finds such an advocate in my friend from Illinois ; at any rate, he had been in New Orleans at the time, in the discharge of important public duties. In reply to an inquiry with regard to that Convention, he said compendiously, that it was " nothing but a stupendous hoax," — yes, Sir, nothing but a stupendous hoax, and the product of that Convention ——

Here Mr. Sumner was called to order by Mr. Sherman, for discussing the merits of the measure, when only the order of business was in

question. He was also interrupted by Mr. Grimes, of Iowa, who said, that, if the Senate would give him a committee, he would show fraudulent voting.

Mr. Sumner. I doubt not that my friend from Iowa is right; but I am aware that it is not proper to discuss the merits of the question on this preliminary motion, and I shall not. I was simply characterizing it, and I was going on to say that in my opinion the resolution the Senator from Illinois so earnestly presses upon the Senate, when we consider its origin and character, is itself very little different from "a stupendous hoax." I say nothing about the Convention, for I was not there, I did not see it. On that point I simply cite the testimony of another. But the resolution of the Senator is before us; we are familiar with its nature. Every moment gives new glimpses of the violence and fraud with which it is associated. Perhaps the expression I have quoted is hardly grave enough in speaking of such a matter, where, in forming the Constitution of a State, military power and injustice to a whole race have been enlisted in defiance of the self-evident truths of the Declaration of Independence. The United States are bound by the Constitution to "guaranty to every State in this Union a republican form of government." Being called to perform this guaranty, you are asked to recognize an oligarchy of the skin, and on this very question the Senate is now called to vote.

The pretended State Government in Louisiana is utterly indefensible, whether you look at its origin or its character. To describe it, I must use plain language. It is a mere seven-months' abortion, begotten by the bayonet in criminal conjunction with the spirit

of caste, and born before its time, rickety, unformed, unfinished, — whose continued existence will be a burden, a reproach, and a wrong. That is the whole case; and yet the Senator from Illinois now presses it upon the Senate, to the exclusion of the important public business of the country. For instance, ——

Here Mr. Sherman insisted on confining the debate to the pending motion. The vote was then taken, and resulted, — Yeas 34, Nays 12; so the resolution for the admission of Louisiana was postponed, never to be resumed.

During the next Congress, Mr. Sumner urged a bill for the organization of Louisiana, with safeguards for Equal Rights, including suffrage without distinction of color; but the Senate was not inclined to consider it.

The failure of the Louisiana resolution attracted attention at the time. Some journals spoke of Mr. Sumner's course with severity; others were rejoiced at the result. The New York *Herald* said: —

"The factious opposition of Mr. Sumner has probably defeated the recognition of the new government of Louisiana by the Senate at the present session, ... although probably two thirds of the Senate are in favor of recognition."

One journal said, in figurative language, that Mr. Sumner had "kicked the pet scheme of the President down the marble steps of the Senate Chamber," and that, as a consequence, the intimate relations which he had sustained with the President must cease.

President Lincoln was too good a man to be influenced by an honest opposition on political grounds. A few days later, Mr. Sumner received from him the following note.

"Executive Mansion, Washington, March 5, 1865.

"Hon. C. Sumner.

"My dear Sir, — I should be pleased for you to accompany us to-morrow evening, at ten o'clock, on a visit of half an hour to the Inaugural Ball. I enclose a ticket. Our carriage will call for you at half past nine.

"Yours truly,

"A. Lincoln."

At the appointed time the carriage was at Mr. Sumner's lodgings. During the ball he was with the Presidential party, which gave occasion to comment; the New York *Herald* remarking, "It was presumed that

the President had indorsed his Reconstruction theories." There is reason to believe that he had not; but he recognized the right of Mr. Sumner to his own individual judgment.

The following extract from the letter of a newspaper correspondent at Washington illustrates the course of the President towards Mr. Sumner.

"Mrs. Lincoln went down the Potomac this morning for City Point and Richmond, escorted by Mr. Sumner, who remains in Washington to exert his influence in the right direction in closing up the war. Nor let any man suppose that Mr. Sumner's influence is slight over this Administration, when Congress is in session. I know of no man who has more. The President disagrees entirely with Mr. Sumner in his views respecting Reconstruction. He was almost indignant at the Senator's course towards Louisiana, adverting to it over and over again in the presence of strangers. But still he respects Mr. Sumner, confers with him, and perhaps fears him. Besides, the Senator has great influence with Mr. Stanton and Mr. Welles. Mr. Sumner is a clever diplomatist, and has always been friendly with Mr. Lincoln. So long as 'peace negotiations' are talked of, Mr. Sumner will not leave Washington but for a day or two, I presume."

The effort of Mr. Sumner on the Louisiana question found a warm and cordial response, as amply appears from letters at the time.

Wendell Phillips wrote from Boston :—

"Though I have but half an hour at home, I cannot let it pass without thanking you for your gallant fight against Louisiana. Your tireless patience in carrying in detail one point after another of the enemy's defences, all winter long, has not passed without our grateful admiration; the masterly strategy of the last week is the grand and fitting climax, — all the more grateful, because we had been told you felt the resistance so hopeless as to fear you must succumb to the dictation of the Cabinet. We have watched your white plume with fearful delight. Could we only hope this defeat would be final, our joy would be unmixed. At any rate, the effort will bear fruit thousand-fold."

Hon. Francis W. Bird wrote from Boston : —

"Let me thank you most heartily for your gallant fight against Louisiana. I hope it will be powerful to the end. I can see it was against fearful odds, and all the more splendid."

Dr. Estes Howe wrote from Cambridge : —

"I don't trouble you much with letters, but I must thank and congratulate you most warmly on your splendid fight and great victory in the Bogus Louisiana struggle. Some weak-kneed Republicans who rejoice at the result

did not know at first whether to rejoice or not, when they saw what tools you had to work with; but your true friends, who have their eyes open, are full of joy, and all the rest will fall into line as soon as the great truth becomes apparent to them."

Hon. Edward L. Pierce wrote from Boston : —

"God bless you a thousand times for your indomitable resistance to the admission of Louisiana with her caste system! This afternoon some forty gentlemen dined at Bird's room, and all, *nemine dissentiente*, approved it, and with full praise."

Joel P. Bishop, the learned law-writer, and author of a much used work on Criminal Law, wrote from Boston : —

"Blessings on you! You have done in this Louisiana matter an excellent work, for which some of your friends thank you less now than they will by-and-by."

Hon. Charles W. Slack, an Antislavery journalist, wrote from Boston : —

"Thanks! — hearty, cordial, continued thanks! — for your brave and persistent opposition to Louisiana.

"There is a very much larger share of the community who will sustain you than at first thought may be supposed.

"The idea of negro suffrage in the disloyal States grows daily in favor and advocacy among business men."

William S. Robinson, the journalist, known as "Warrington," wrote : —

"I cannot sit down to my work this morning, albeit pressed for time, without giving you the homage of my sincere admiration and respect for killing Louisiana, at least *pro tempore*. Thanks! thanks! thanks!"

General William L. Burt, afterwards Postmaster of Boston, who had served in Louisiana during the Rebellion, wrote : —

"I congratulate you upon your defeat of the Louisiana Bill. Your action was not only justifiable, but commendable, — doubly so in view of the fact of your concession upon the Reconstruction Bill. . . . . The complaints made by the Administration, or its friends, of the means you took to prevent the fraud upon you and the people, are a compliment, first, to your sagacity, and, secondly, to your skill and ability. You will be vindicated a hundred times before December."

Colonel Albert J. Wright, having great influence in the local politics of Boston, wrote : —

"Something must be done in Boston. Some of your admiring friends here, who at first, in the midst of the muddle of telegraphic despatches, had some misgivings in regard to your action on 'Reconstruction' questions before the Senate, have had their eyes opened, and now feel that you have rendered a great service to the country in battling manfully for the rights of humanity, — that you have done right, and saved us from a new disaster. Of course we must have a great meeting at the Music Hall, and give you an ovation: nothing less will satisfy us."

F. B. Sanborn wrote from Concord, Massachusetts: —

"Allow me to add my congratulations to those of your other friends on your successful opposition to the Louisiana scheme of Reconstruction. I look upon you as the real destroyer of that fine web of intrigue and absurdity so carefully spun."

Henry O. Stone wrote from Framingham, Massachusetts: —

"Although an humble and obscure individual, I cannot refrain from thanking you for your persistent resistance to the admission into Congress of the Louisiana claimants. I feel as if you ought to have personal acknowledgment from every one in Massachusetts who can appreciate your just and patriotic motives and wise statesmanship. I know you will be accused of factious opposition to the Administration and the President; but there are those who believe your opposition comes from a desire to do justice, not only to the blacks, but to the poor whites, and to establish the Government upon the only permanent and safe foundation on true democratic principles."

Hon. Adin Thayer wrote from Worcester: —

"I thank you from the bottom of my heart for your heroic and successful opposition to the Louisiana fraud. Nothing you have ever done better deserves the gratitude of the country and of mankind."

Elizur Wright, one of our earliest Abolitionists, wrote from Boston: —

"Your keeping out the *sham* State of Louisiana is worth, in my estimation, any three average military victories. I would give the United States Treasury half I am worth to have Congress, the next thing it does on the subject, decide black suffrage as the 'inexorable condition' of readmission."

Rev. A. P. Marvin wrote from Winchendon, Massachusetts: —

"I have just risen from reading in the telegraphic despatch of the noble stand made by you in the Senate last night, by which the admission of

Louisiana is staved off for the present. I have often fervently thanked God that you were in your present position, and enabled to do so much to prevent evil and accomplish good, — but never more earnestly than now. I know it must be hard to withstand so many of the supporters of the Administration, but the battle *must* be fought on the very question involved in this measure. It will not only be wicked and infamous, but suicidal, for us to let the greater part of the rank and file of the Rebels come back and be voters, while we exclude our colored countrymen. I hope strength will be given to you, according to your day; as to your zeal, courage, ability, and prudence, nothing is wanting."

Rev. George C. Beckwith, Secretary of the American Peace Society, wrote from Boston: —

"I have just been reading, with my wife, some account of your course on the Louisiana question; and we can't help sending you our thanks for your persistent efforts to avert the very possible evils likely to come from a wrong decision in this case. God grant you success in preventing here a precedent that *may* lead to irretrievable mischief!"

Rev. George B. Cheever, the constant Abolitionist, wrote from New York: —

"Permit me the pleasure of congratulating you on the firm and noble stand you are maintaining in the Senate for the rights of loyal men in Louisiana, irrespective of color, and for the prerogative of Congress, as well as its obligation, to settle the government of that State as a republican government. Your efforts are so much the more admirable and important as they are opposed by mistaken Senators, such as Trumbull and Doolittle, and by some of our editors, as of the *Times*. The heart of the country goes with you, not with your opponents. It would be a terrible disaster to have the precedent set of a State readmitted to the Union with the sacrifice of the rights of the blacks. Your resolutions of Saturday, as well as the amendment you proposed, were admirable. The victory will be worth everything, if you can carry something of that kind."

A. P. Hayden wrote from New York: —

"I cannot let this opportunity pass of thanking you for the manner in which you have stood by the colored people of Louisiana, — almost the only out-and-out Loyalists of that State. I agree with you that any settlement of the question that will not put the ballot into their hands will create mischief that will take a long time to remedy. When I read in this morning's *Tribune* of the vote to postpone the Louisiana matter until December, I felt as if a great moral as well as political battle had been won by our side."

Dr. J. B. Smith, giving expression to the feelings of colored citizens in a letter from Boston, said: —

"I know of no words of any language adequate to convey to you the gratitude I feel in my inmost soul towards you for your efforts and final success in defeating the bill for the readmission of Louisiana as a State into the Union, with the present flagrantly unjust and proscriptive laws and Constitution. *The white people of this country have been so accustomed to regard and treat us as their natural inferiors*, that we dread the very thought of submitting to them the adjustment of our rights after their own are made secure. What is not gained for us now will not be obtained for a quarter of a century after peace is declared."

Frederick Douglass, the watchful orator of his race, wrote from Rochester, New York: —

"The friends of Freedom all over the country have looked to you, and confided in you, of all men in the United States Senate, during all this terrible war. They will look to you all the more, now that peace dawns, and the final settlement of our national troubles is at hand. God grant you strength equal to your day and your duties! is my prayer and that of millions."

In harmony with these expressions, the following resolution was adopted unanimously by the Worcester Freedom Club, and communicated to Mr. Sumner: —

"*Resolved*, That the 'Worcester Freedom Club' tenders to the Hon. Charles Sumner their gratitude as freemen, for the able manner in which he met the question for the admission of Louisiana, and for his noble defence of the 'Equality of all men before the Law.'"

Evidently Mr. Sumner was not alone. The right of colored fellow-citizens was recognized as next in order for discussion and judgment. The Antislavery fires were flaming forth anew.

GUARANTY OF REPUBLICAN GOVERNMENTS IN THE REBEL STATES.

Resolutions in the Senate, February 25, 1865.

While the resolution recognizing the existing State government of Louisiana was under consideration, Mr. Sumner introduced the following resolutions, which, on his motion, were ordered to be printed. He gave notice that at the proper time he should move them as a substitute for the pending resolution. But before the proper time the Louisiana resolution was postponed, and it fell with the session.

Resolutions declaring the duty of the United States to guaranty Republican Governments in the Rebel States, on the basis of the Declaration of Independence; so that the new Governments shall be founded on the consent of the governed, and the Equality of all persons before the Law.

RESOLVED, That it is the duty of the United States, by Act of Congress, at the earliest practicable moment consistent with the common defence and the general welfare, to reëstablish republican governments in those States where loyal governments have been vacated by the existing Rebellion, and thus, to the full extent of their power, fulfil the requirement of the Constitution, that "the United States shall guaranty to every State in this Union a republican form of government."

2. That this important duty is positively imposed

by the Constitution on "the United States," and not on individuals or classes of individuals, or on any military commander or executive officer, and cannot be intrusted to any such persons, acting, it may be, for an oligarchical class, and in disregard of large numbers of loyal people; but it must be performed by the United States, represented by the President and both Houses of Congress, acting for the whole people.

3. That, in determining the extent of this duty, and in the absence of any precise definition of the term "republican in form," we cannot err, if, when called to perform this guaranty, we adopt the self-evident truths of the Declaration of Independence as an authoritative rule, and insist that in every reëstablished State the consent of the governed shall be the only just foundation of government, and all persons shall be equal before the law.

4. That, outside the Declaration of Independence, it is plain that any duty imposed by the Constitution must be performed in conformity with justice and reason, and in the light of existing facts; that therefore, in the performance of this guaranty, there can be no power under the Constitution to disfranchise loyal people, or to recognize any such disfranchisement, especially when it may hand over the loyal majority to the government of the disloyal minority; nor can there be any power under the Constitution to discriminate in favor of the Rebellion by admitting to the electoral franchise Rebels who have forfeited all rights, and excluding loyal persons who have never forfeited any right.

5. That the United States, now at a crisis of history called to perform this guaranty, will fail in duty under the Constitution, should they allow the reëstablish-

ment of any State without proper safeguards for the rights of all the citizens, and especially without making it impossible for Rebels in arms against the National Government to trample upon the rights of those fighting the battles of the Union.

6. That the path of justice is also the path of peace, and that for the sake of peace it is better to obey the Constitution, and, in conformity with the guaranty, to reëstablish State governments on the consent of the governed, and the equality of all persons before the law, to the end that the foundations may be permanent, and that no loyal majorities may be again overthrown or ruled by any oligarchical class.

7. That a government founded on military power, or having its origin in military orders, cannot be "republican in form," according to the requirement of the Constitution; and that its recognition will be contrary, not only to the Constitution, but also to that essential principle of our Government which, in the language of Jefferson, establishes "the supremacy of the civil over the military authority."[1]

8. That, in the States whose governments have already been vacated, a government founded on an oligarchical class, even if erroneously recognized as "republican in form" under the guaranty of the Constitution, cannot sustain itself securely without national support; that such an oligarchical government is not competent at this moment to discharge the duties and execute the powers of a State; and that its recognition as a legitimate government will tend to enfeeble the Union, to postpone the day of reconciliation, and to endanger the national tranquillity.

[1] First Inaugural Address, March 4, 1801: Writings, Vol. VIII., p. 4.

9. That considerations of expediency are in harmony with the requirements of the Constitution and the dictates of justice and reason, especially now, when colored soldiers have shown their military value; that, as their muskets are needed for the national defence against Rebels in the field, so are their ballots yet more needed against the subtle enemies of the Union at home; and that without their support at the ballot-box the cause of human rights and of the Union itself will be in constant peril.

NO PICTURE AT THE CAPITOL OF VICTORY OVER FELLOW-CITIZENS.

Remarks in the Senate, on Joint Resolution authorizing a Contract with William H. Powell, February 27, 1865.

February 27th, the Senate having under consideration a joint resolution from the House of Representatives, authorizing a contract with William H. Powell for a picture at the Capitol, not to exceed twenty-five thousand dollars in amount, Mr. Sumner said : —

MR. PRESIDENT, — I am sorry that my friend from Vermont [Mr. Collamer] feels obliged to press this proposition. I do not like to vote against it. Still more, I am reluctant to speak against it. But, satisfied as I am, after careful reflection, that it ought not to pass, I shall express briefly the grounds of my opposition. When it was called up the other day, I ventured to say that I did not think this the time for us to enter upon the patronage of art. Of course such patronage is beautiful and most tempting. It may seem ungracious to arrest it; but I submit confidently, that at this moment, with the national debt accumulating at the rate of millions a day, with brave soldiers still unpaid, with a drain upon our resources at every point, it is not advisable to enter upon the patronage of art, beautiful and most tempting as it is.

There is much to be done to complete the National Capitol in all its parts. Let the work proceed, until

the sublime structure stands forth worthy in everything of the destinies it enshrines. But I think we may hesitate at this time to enter upon any ornamentation not essential to the work. If you order one costly picture, you will be called to order another; and where will this expenditure stop? Better wait for the days of peace, soon to come, I trust, when your means will be greater, and you will approach the question in a calmer mood.

Thus far I have said nothing of the artist. But the vote proposed selects one artist for especial honor, and leaves all others unnoticed. It is like a vote of thanks to an officer in the army or navy. Are the merits of this artist so peculiar and commanding that he should be taken and all others left? I doubt. At least, I know that there are other artists in the country who deserve well of those who assume the patronage of art. Are you ready, in this off-hand way, without inquiry, without even hearing their names, to discriminate against them all? I put these questions in no spirit of criticism, and certainly in no unkindness to the artist, for whom, let me say, I have a sincere regard. There is already one picture by him in the Capitol. A second would be more than enough.

Then, again, are you sure that the subject selected at the present time would be such as a maturer and more chastened taste could approve? This is a period of war. We are all under its influence. But I doubt if it be desirable to keep before us any picture of war, especially of a war with fellow-citizens. There are moral triumphs to which art may better lend its charms. I need only refer to the Proclamation of Emancipation, which belongs to the great events of history.

I send to the Chair an amendment, to come in at the end of the resolution: —

"*Provided*, That in the National Capitol, dedicated to the National Union, there shall be no picture of a victory in battle with our own fellow-citizens."

In the debate that ensued, Mr. Wilson, of Massachusetts, said: "I rise more especially to say that I disagree with my colleague altogether in the proposition that no work of art shall grace the Capitol of this country that represents anything of the present war of a military or naval character. I do not believe in that doctrine." Mr. Howe, of Wisconsin, said: "If there were any one proposition which could make the original resolution more distasteful to me than it is in itself, it would be the proviso moved by the Senator from Massachusetts."

February 28th, the amendment of Mr. Sumner was rejected without a division.

Mr. Sumner then offered another: —

"*Provided*, That no contract shall be made, until after a competition among the artists of the country, all of whom shall have an opportunity of offering themselves as candidates, and of exhibiting designs for the proposed picture; and the committee shall postpone any contract with Mr. Powell, until they shall be satisfied, after such competition, that he is the most meritorious artist."

This also was lost, — Yeas 15, Nays 23, — as also another amendment, to purchase of F. B. Carpenter his picture of "The Emancipation Proclamation," instead of a picture from Mr. Powell, for which there were only two votes. The resolution was then passed.

Among those who expressed sympathy with Mr. Sumner on this occasion was General Robert Anderson, who commanded at Fort Sumter. He wrote: —

"I am glad to see that you, like myself, are looking forward to the time when this Rebellion shall end, and do not wish to see perpetuated, on canvas or in marble, a trace of its having existed." [1]

[1] See, *ante*, Vol. VIII. p. 361.

FREE SCHOOLS AND FREE BOOKS.

Remarks in the Senate, on an Amendment to the Internal Revenue Act, making Books free, February 27, 1865.

February 27th, the Senate had under consideration a bill to amend the Internal Revenue Act, by striking out of the clause relating to printed books the word "magazines," and by inserting after the word "newspapers" the words "and periodical magazines," so that it would read: "On all printed books, pamphlets, reviews, and all other similar printed books, except newspapers and periodical magazines, a duty of five per cent ad valorem." In commenting on this proposition and another adopted by the House, Mr. Sherman, of Ohio, remarked: "I almost became a convert to the idea of the Senator from Massachusetts, and that it would be better to strike out the whole clause, rather than to attempt to make these discriminations and qualifications and exceptions." Mr. Sumner followed.

I AM very glad to hear the Senator from Ohio say that he had become almost a convert to the idea of removing all tax on books. He reminded me of a certain person who was "almost persuaded to be a Christian." I think it would be better for the Senator, had he become a complete convert. I am sure his influence would be better for the country.

I speak from no motive of self, and from no personal interest whatever, but from a profound conviction that for the best interests of the country there should be no tax on books. What you can extort out of this tax, in any event, is very small; and it is always a tax on

knowledge. Look at it as you will, to that complexion it comes at last. I do not think it worth while for Congress to adopt such a tax. It is the boast of our institutions that they stand upon the intelligence of the people, and it is a further boast that we supply education for all at the public cost; but books are indispensable in this benefaction. Every tax upon books, therefore, is an impediment to that education which is the pride of our country. Plainly it is inconsistent with the genius of our institutions. The result of this tax will be petty, but, to the extent of its influence, prejudicial.

Mr. Sumner moved to strike out the whole clause. Then, in reply to Mr. Clark, of New Hampshire, he remarked: —

The Senator from New Hampshire does not quite like to tax the Bible. Sir, I do not like to tax it. My proposition is broader than his; but he knows very well that the real signification of *Bible* is *book*.

Mr. Clark. Not in our language.

Mr. Sumner. I do not know about that. The Senator does plead, however, for the manufacturer of the shirt, whose shop is by the side of the bookseller; but the difference between the two cases is, as I have indicated: that, if you tax the book, you tax knowledge; if you tax the shirt, you but tax one of the general manufactures of the country. The distinction may not be accepted by all; and yet to my mind it is perfectly clear. You cannot tax a book without taxing knowledge. But it is said there are books that might very well be taxed out of existence. Where run the line? How make the discrimination? The trouble is more

than it is worth. Better, therefore, have no such tax than run any such line or make any such discrimination. A book is a book; and there should be no tax on a book.

Afterwards, in reply to Mr. Reverdy Johnson, of Maryland, he remarked: —

I HAVE only one word in reply to the learned Senator from Maryland. He does not regard a tax on books as a tax on knowledge. Pray, then, what is such a tax? I can imagine no tax more directly on knowledge. If the Senator can, I should like to have him indicate it. Possibly he can. I believe he cannot. If we repair to the experience of other countries, we find that books are not taxed. In England, where taxation is carried to the farthest point, we know that books are not taxed. We know, also, that, after long and protracted struggle, only during this last year was the last tax on knowledge overthrown, being the paper duty. And yet, Sir, Senators would take up the cast-off taxes of Great Britain, and do even worse. Great Britain has taxed paper, has imposed a stamp-tax also on newspapers, all of which have been latterly removed; but I am not aware that this taxing nation has imposed a tax upon books. And shall our Republic, founded on knowledge, whose duty and mission are to make knowledge cheap, impose, for the first time, a tax on books?

Mr. Wilson said: "I shall vote against exempting from taxation any book whatever, even the Bible. . . . . I am against these exemptions. What, Sir! a tax on books a tax on knowledge? Suppose it is: so is a tax on the coat the boy who goes to school wears."

Mr. Sumner replied: —

Mr. President, — My colleague does not see the difference between a tax on a boy's clothes and a tax on his book. The country, in its experience, from the first settlement at Plymouth Rock, has seen it. Clearly it saw the difference, when it undertook to say that education should be at the public cost, free of charge to every one in the community. My friend [Mr. Howe] shakes his head; he knows well that one of the proudest acts in the history of New England was when at an early day she established her system of public schools, which has continued ever since, where every child is educated free of charge. He was educated at the public cost, but not clothed at the public cost. And, Sir, if you would know what gave to New England those elements of prosperity and of influence, which are, I think, sometimes recognized, you will find them in that very education at the public cost. It was because those early settlers, founders of communities, saw that the mind should be clothed, and willingly undertook to clothe it. The family at home were left to clothe the body. Now I would have the country act according to this illustrious precedent, which has done so much for the national name, and remove every impediment in the path of knowledge. Do not tell me that by the same rule you must remove the tax from clothes. The conclusion does not follow. If our fathers were right in establishing free schools, it is right for us now to insist upon free books.

The amendment of Mr. Sumner was lost, — Yeas 5, Nays 27.

THREE CONDITIONS PRECEDENT TO THE RECEPTION OF SENATORS FROM A REBEL STATE.

RESOLUTION IN THE SENATE, MARCH 8, 1865.

MARCH 8th, at the Extra Session, called for executive business, the Senate having under consideration the credentials of William D. Snow as Senator from Arkansas, Mr. Sumner submitted the following resolution, which was ordered to be printed.

RESOLVED, That, where a State has been declared to be in insurrection, no person can be recognized as Senator from such State, or as claimant of a seat as Senator from such State, until after the occurrence of three several conditions: first, the cessation of all armed hostility to the United States within the limits of such State; secondly, the adoption by such State of a constitution of government republican in form and not repugnant to the Constitution and laws of the United States; and, thirdly, an Act of Congress declaring that the people of such State are entitled to representation in the Congress of the United States.[1]

[1] This last requirement was the substance of a concurrent resolution of the two Houses of Congress, adopted in the House February 20, 1866, by a vote of 109 Yeas to 40 Nays, and in the Senate March 2d, Yeas 29, Nays 18.

UNJUST ARREST AND PROSECUTION OF TWO BOSTON MERCHANTS.

PROTEST AND OPINION ON THE CASE OF THE MESSRS. SMITH BROTHERS, MARCH 17, 1865.

BENJAMIN G. SMITH and Franklin W. Smith, merchants and co-partners in Boston, with the firm name of Smith Brothers & Co., were suddenly arrested in June, 1864, by order of the Navy Department, under the charge of fraud in the performance of contracts with the Department. They were at once consigned to Fort Warren, in the harbor of Boston, with strict injunctions to prevent any communication by them with the outer world. Bail to the amount of half a million dollars was required, which was subsequently reduced to forty thousand. Their counting-room was broken open, their safe forced, and their books seized. Their houses were searched, and private papers taken away. Their business was, for the time, destroyed. This work was crowned by ordering a court-martial for the trial of these civilians at Philadelphia.

These proceedings excited a general interest at Boston. The Massachusetts delegation in Congress united in the following appeal to the President, which was drawn by Mr. Sumner.

TO THE PRESIDENT OF THE UNITED STATES: —

THE undersigned, Senators and Representatives in Congress from Massachusetts, ask leave to call your serious attention to the proceedings initiated by the Navy Department against Benjamin G. Smith and Franklin W. Smith, of Boston, of the firm of Smith Brothers & Co., a much respected firm, which has hitherto enjoyed the confidence, personal and mercantile, of

the community where they reside. Among their neighbors and friends these proceedings have already attracted much attention, and awakened corresponding feeling.

The proceedings have seemed to be harsh, vindictive, and unnecessary.

1. In the character of the arrest of Messrs. Smith, which was attended by circumstances of severity utterly unjustifiable.

2. In requiring bonds to so large an amount as half a million of dollars. The fact that the parties in question easily obtained bonds for a much larger amount does not render the exaction of "excessive bail" less obnoxious to the requirements of the Constitution and of justice, or less indicative of the spirit in which these proceedings have been conducted.

3. In the seizure of their books and papers, which are still detained, although regarded by their eminent counsel as important to their defence.

4. In turning into a military offence what is more proper for a civil tribunal, and dragging these defendants before a court-martial.

5. In transferring the proceedings from Boston, where the parties reside, and the transactions in question occurred, to Philadelphia: thus increasing greatly the difficulties and the cost of defence. This will be appreciated, when it is understood that the witnesses are very numerous, and chiefly engaged in mercantile business, so that they cannot leave Boston without neglect of their private interests.

The undersigned, on reviewing these circumstances, which are so inconsistent with the administration of justice in its most ordinary forms, have been at a

loss to account for the spirit manifested in the prosecution. If they look at the trivial character of many of the specifications against the defendants, they are still more at a loss. It is difficult to account for such elaborate and persistent harshness, without yielding to the prevailing belief that other motives than the vindication of justice have entered into this case.

The undersigned are not strangers to the fact, that one of these defendants, in the discharge of what he believed to be his duty as a good citizen, has, by correspondence and testimony before committees of Congress, been brought into collision with officers of the Navy Department; and there is too much reason to believe that some of these officers have allowed themselves to be governed by personal feelings throughout these strange proceedings.

Under such circumstances, the undersigned most respectfully ask your assistance in securing justice to these defendants, according to the common course of proceedings at law. They are acquainted with the statute which provides court-martial for contractors in certain cases, and they are unwilling to make any suggestion which shall interfere with its efficiency; but they have no hesitation in saying that such a statute, intended for extreme cases, should not be applied to a case like the present, where, with a single exception, the questions are simply whether the defendants complied with their *contract*, and therefore, from their nature, can be better considered by the ordinary tribunals accustomed to such questions than by a naval tribunal composed of officers who have no familiarity with them.

If the pending proceedings against the Messrs. Smith

should be continued, there are two courses with regard to them which may be recommended.

First, That they should be transferred at once to the United States Court in Massachusetts, and be placed under the direction of the learned Attorney of the United States for that District.

Secondly, If the foregoing order is not deemed expedient, on the existing evidence, then a commission or commissioner might be appointed by the President to inquire into the circumstances attending the arrest of the defendants, and also into the nature of the charges against them, in order to ascertain and report if there is any sufficient reason for the singular harshness to which they have been already subjected, and also for the exceptional proceedings instituted against them.

For the sake of justice, and to relieve the Government from all suspicion of undue harshness, the undersigned protest against the spirit in which these proceedings have been conducted, and appeal to you for such remedy as shall seem best, to the end that the public interests may be adequately protected without any sacrifice of the rights of the citizen, and without needless interference with the order of business.

CHARLES SUMNER,	D. W. GOOCH,
HENRY WILSON,	WILLIAM B. WASHBURN,
THOMAS D. ELIOT,	JOHN D. BALDWIN,
HENRY L. DAWES,	GEORGE S. BOUTWELL.
S. HOOPER,	
JOHN B. ALLEY, *by C. Sumner, as by letter.*[1]	

[BOSTON, August 15, 1864.]

[1] Hon. Alexander H. Rice, a Representative of Boston, being absent from Boston, addressed a letter to the President.

The trial proceeded at Charlestown, lasting several months, with able counsel for the defendants, and it ended in judgment against the defendants, who were sentenced to imprisonment for two years and a fine of twenty thousand dollars. This judgment and sentence were approved by the Secretary of the Navy, and it only remained for the President to give them his sanction. Before this was done, Mr. Sumner saw him. The President listened to his appeal, and at once put into his hands the elaborate report from the Secretary of the Navy, setting forth the facts in the case and approving the conclusion of the court-martial, — asking him to read it carefully and give his opinion upon it, which he did without delay.

OPINION.

THIS case has been pending since 17th June, 1864, when the Messrs. Smith Brothers, who, as merchants, enjoyed an enviable reputation, were suddenly arrested by military authority, and, without any opportunity of conferring with counsel or friends, were hurried off to Fort Warren. During all this period, running over nine months, I have kept myself aloof from the case, so far as possible, knowing that I was not so circumstanced as to consider it on its merits, and under the conviction, that, at last, justice would be done.

On certain matters independent of the merits I have with others been called to speak. One of these was the manner of the arrest and the bail required. At the time of the arrest, all the books and papers of the parties were seized and sequestered. The hardship of the arrest was aggravated by the bail required, which was fixed at half a million of dollars. "Excessive bail" is forbidden by the Constitution; but it would be difficult to say what bail could be "excessive," if this was not.

The other matter on which I was called to speak was the order for the trial of the Messrs. Smith Broth-

ers by court-martial at Philadelphia, when it was notorious that the proceedings must be protracted, and that numerous witnesses must be summoned from Boston, at great expense: the whole constituting a plain oppression, not unlike the demand of "excessive bail."

The hardship in these preliminary proceedings seemed to justify an appeal to the President, in which I joined, for his intervention at least to change the place of trial. Perhaps they illustrate also the temper which entered into this prosecution.

It is only since the President has put into my hands the report on the findings of the Court, adopted by the Secretary of the Navy, that I have looked into the case on its merits. I have read that report carefully, and also the arguments of the counsel on both sides; but I have not had any opportunity to examine the whole record. From the fulness of the report, and of the arguments, this was hardly necessary. The record is extensively cited in the report and the arguments, and also in a pamphlet by one of the respondents, which I have read.

The more I have examined the case, the more I have been surprised by the preliminary proceedings, the continued prosecution, and the findings of the Court. I can well understand how they were used in the House of Representatives as an argument for the total repeal of the Act of Congress authorizing the trial of civilians by courts-martial. Such a case must make us fear, that, under this Act, justice may be sacrificed. It might make honest merchants hesitate to enter into business relations with the Government.

On careful examination, it seems that the whole prosecution, so far as proof is seriously pretended, is

reduced to one single specification, — to wit, the sale and delivery of five thousand pounds of a tin called Revely, instead of a tin called Banca, by which, at most, the Government lost one hundred dollars. There are other specifications; but the report adopted by the Secretary of the Navy forbears to dwell on them; and I do not think they can be made the foundation of any judgment against the respondents. They did not seem to have impressed the President, in the conversation which I had with him on the subject. I put them aside as unproved or irrelevant. There only remains the single specification with regard to tin.

Look at this carefully, and the wonder increases that these proceedings were ever instituted.

1. The first remark to make is, that, even according to the finding of the Court, the Government has suffered only to the amount of one hundred dollars, — being the difference in price between the two kinds of tin at the date of delivery. *The pettiness of this loss* is still more apparent, when it is considered that the transactions of the respondents with the Government reached the sum of more than twelve hundred thousand dollars, having such infinite details that they covered twelve hundred and five pages of sales. Surely, on every principle of reason or evidence, the insignificance of this loss, in transactions on so large a scale, and extending over three years of time, constitutes an unanswerable presumption in favor of the respondents, excluding, as it does, any adequate motive for the perpetration of fraud. Even assuming that the supply of tin was questionable, it would be reasonable to call it ill-considered, hasty, or mistaken, rather than criminal, according to the finding of the Court. Certainly it could be no jus-

tification of the vindictive arrest and bail with which the proceedings began, and it is frightful that it should be made the pretence for a sentence of two years' imprisonment and twenty thousand dollars' fine. If a mountain in labor ever brought forth a mouse, it is this mountainous prosecution, whose only offspring yet crawling on earth is an allegation of loss to the United States of one hundred dollars! But, if we look further at this transaction, it will be seen that it is absolutely unimpeachable.

2. Much confusion has been caused by *ignorance with regard to the two tins in question.* The report adopted by the Secretary of the Navy says of them, that, "in the course of commerce, *the two are never confounded by dealers*"; then, again, that "Banca tin is *one article,* having a certain price, and that Revely tin is *another and a different article,* having a different price." The repetition of this assumption again and again shows how important it was regarded in support of the accusation. But this assumption is founded on mistake.

I call attention to the letter of Hon. S. Hooper, addressed to myself, under date of 14th March instant, in which he testifies from his experience as an importer, for many years, of these two tins. He says: "If the only charge against Messrs. Smith Brothers & Co. is the delivery of Revely tin, on a contract to supply the Government with Banca tin, it is an absurdity, and it is evident to me that the Court did not know what Banca tin was." He then proceeds to say, that the tin of the East passes under the *general name* of Banca tin, which is applicable to the Revely or Straits tin as well as to the Dutch; and he adduces the authority of the Com-

mercial Dictionaries. Thus, McCulloch, under the word "Tin," after speaking of the tin of Great Britain, says, "Tin, Oriental, in commercial language usually called Banca tin," produced, according to this authority, in China, the Malay countries, and the islands lying toward Java. He also cites Simmonds's "Dictionary of Trade," published in London as late as 1858, which, under the term "Banca-Tin," says, "A valuable kind of tin, equal to English refined, obtained in the Eastern Archipelago, originally from the island of Banca exclusively; but much is now procured in Malacca, and sent to Singapore for shipment." The latter, it will be borne in mind, is what has been treated in this case as Revely.

Certainly, the testimony of Mr. Hooper, in concurrence with the Commercial Dictionaries, must tend to show that the report is mistaken, when it so confidently asserts, that, "in the course of commerce, the two tins are never confounded by dealers." On the contrary, they have been treated by "dealers," and by authoritative writers on commerce, as substantially the same. It is almost superfluous for me to add, that, according to the ruling of our courts, such testimony would be decisive. Thus, where certain words were used in the tariff, Mr. Justice Story decided, that, "the tariff being a statute regulating commerce, the terms of it must be construed *according to commercial usage and understanding.*"[1] Common sense is in harmony with this judgment.

As if to put this *commercial usage* beyond question, we have the testimony of Mr. Richards, a witness *for the prosecution*, as follows.

[1] Bacon *v.* Bancroft, 3 Law Reporter, 387. See, also, Lee *v.* Lincoln, 1 Story, R., 610.

"*Cross-Question* 18. Do you ever have orders from customers for Banca tin, that you execute by the delivery of Revely or Straits? — *Ans. We have.*"

"*Cross-Question* 22. Suppose you had an order from a foundry — say Hooper & Co. — for five thousand pounds of Banca tin, which you knew was to be used for castings, how would you fill such an order? — *Ans. We should not hesitate to give him Revely.*"

"*Re-Cross-Question* 1. Would you not deliver to a party five thousand pounds of Revely tin, upon a contract for Banca tin, if you had never known them to buy such a quantity of any kind but Revely or Straits, if you had repeatedly sold them Revely or Straits acceptably, and you considered the tin was to be used for castings? — *Ans. I should.*"

3. The *usage at the Navy Yard* was in harmony with commercial usage, as the testimony abundantly shows. For *at least seven years* previous to the contract of the respondents, the tin known as Revely had been received at the yard as Banca. Edward Cody, witness for the prosecution, and the master founder, on cross-examination, puts this beyond question.

"*Cross-Question* 4. During these seven years [past], has not the Revely tin been the standard article in use in your bureau or foundry? — *Ans. It has.*"

"*Cross-Question* 11. If you had been inquired of by them [Smith Brothers & Co.] what kind of tin you required, what would have been your reply? — *Ans. I should have had the same as I have had.*

"*Cross-Question* 12. What is that? — *Ans. Revely.*"

Another witness, the Hon. Eugene L. Norton, the Navy Agent at Boston, testifies, that, having occasion to buy tin on a requisition from the Ordnance Office, he sent to inquire of Captain Green, the Ordnance Officer,

what brand was required. The answer was, "that, in all cases where it was foundry work, Revely or Straits would be the kind that would be received; that, in those cases where it was wanted in small quantities, for solder, Banca would be preferred, as Revely or Straits was somewhat cheaper than Banca." And he added, that the quantity named in the requisition, as a ton, or a pig, would indicate the kind he should buy. Add to the testimony of these two witnesses the undisputed fact, that, when, in May, 1863, C. W. Schofield, being under contract to deliver five thousand pounds of Banca, failed to perform his contract, the Government, although entitled to purchase the desired article in open market at his expense, *bought Revely.* Here was a practical interpretation of the contract, which establishes the usage of the Navy Yard.

4. The *openness of the transaction* and of the delivery testify also to the *usage.* The tin, when delivered, was stamped upon its face "Revely & Co." This stamp, which was open to the observation of all officers, workmen, and passers-by, is an incontrovertible witness, which no argument of counsel or ingenious commentary can neutralize. Calmly, but unanswerably, it shows two things: first, the usage at the Navy Yard; and, secondly, the good faith of the transaction. But I refer to it now simply to illustrate the usage.

5. Then comes *the acceptance of the tin* marked as Revely, and the approval of the bills by the officers of the Government, in performance of the contract. It is not denied that the tin was accepted by Mr. Merriam, the master machinist at the Navy Yard, and that the bills were approved by Mr. Kimball, the inspecting officer of Government, — an inspector who is said to have

been unfriendly to the respondents. This double fact is beyond question. An attempt is made to throw doubt on the integrity of one of these witnesses, by charging complicity; but it does not appear that there is a scrap of evidence in the record to sustain the imputation, and I need not say it is outrageous to imagine it, in order to increase the pressure upon the respondents. Mr. Merriam, in his testimony, says: "I was influenced, undoubtedly, *from my knowledge of the practice which had existed heretofore,* and also from my belief that the article answered every purpose in the department which Banca tin was required for. *The previous practice of the department,* of which I had been informed, in addition to my own judgment *as to the substantial equality of the articles,* were reasons for my approving the bill." Nothing could be more explicit or reasonable.

The report adopted by the Secretary of the Navy seeks to parry the force of this approval by the allegation, that "there is not a particle of proof on the record that any one of the officers or other persons employed at the Navy Yard, or in the transaction of its business, had ever received from the Government any sort of authority to make such inspection, approval, and payment as appears in the case." The report forgets *the usage of seven years* at the Navy Yard, and *the commercial usage* besides, which were ample to justify them.

6. As it is evident that the Government did not expect to receive other than Revely, so it is proved that *the respondents never expected to supply other than Revely,* unless in cases of small quantities, where, as we have seen, the Banca was supposed to be desired. Such is the testimony of Benjamin G. Smith, one of the respondents, and also of Mr. Dunnells, their clerk.

The latter states, that his instructions from the respondents were to deliver Banca when small lots were required, but Revely when large lots of one thousand pounds and upwards were required, and that, as far as his knowledge went, this had always been done. Therefore the contract was performed according to *the mutual understanding of the two parties.*

7. *The price,* according to the contract, shows that the tin called Revely was intended. This can be demonstrated.

At the date of the contract, 30th March, 1863, the price of Banca in the market was fifty-seven to fifty-eight cents a pound. Revely was less. The price stipulated in the contract was fifty-seven cents. But it is plain that the respondents could not undertake to supply an article at less than its market price. This would be absurd. Of course, as merchants, they expected a profit. Therefore, in their bid, they would naturally take into consideration the various elements which would enter into the final price. These would be, first, the original price; secondly, the commission; thirdly, the condition of the currency, which at that time had begun to depreciate; fourthly, the variation of the market for a month; fifthly, store expenses and interest; sixthly, postponement of payment; and, seventhly, risks of a contractor in placing himself within the unhesitating grasp of military power. So far as these can be estimated, they are as follows: —

Original price	.52
Store expenses and interest at 5 per cent	.0260
	.5460
Commission at 5 per cent	.0273
	.5733

But the price was fifty-seven cents.

Now can any person, not to say any merchant, assert that fifty-seven cents a pound was a high price for the tin called Revely? Would anybody but a fool offer to supply the tin which in this prosecution is called Banca at fifty-seven cents a pound, when its original price was more than this, and the contractor must lose store expenses and interest, with the risks of currency, market, postponement of payment, and military tribunals, without the possibility of a mill for commissions? Clearly not. It is evident, therefore, that, in offering to supply Banca tin at fifty-seven cents a pound, they must have intended that species of Banca tin known as Revely, which, according to the usage of the Navy Yard and of merchants, had been recognized as Banca tin.

On this point we have the testimony of Mr. Richards, a witness for the Government, whose cross-examination thus confirms the foregoing conclusion.

"*Cross-Question* 37. What would it be worth to give a party the refusal for, say, five thousand pounds of tin for twenty or thirty days? — *Ans. At least fifteen per cent.*"

"*Cross-Question* 44. During the year 1863, how much, in addition to the cash market price, would you have considered should be added for a refusal of thirty days? — *Ans. From ten to fifteen per cent.*

"*Cross-Question* 45. Tin being sold to us at fifty and three-fourths cents net cash in the market, would fifty-seven cents be an improper sum for us to charge the Government on a time refusal? — *Ans. I should think not.*

"*Cross-Question* 46. If you were to be subject to a delay of vouchers for merchandise delivered for thirty days, if there should be a reservation of twenty per cent until the contract was closed, and if then you were liable to be

compelled to receive certificates of indebtedness that would not sell in the market at par, what, in addition to the cash market price, would you consider should be added? — *Ans. From five to ten per cent, I should think.*"

"*Cross-Question* 50. Upon a Government contract, to run three months or one year, with a reservation of twenty per cent, a bid being made which amounts to a refusal for twenty or thirty days, and subject to terms of Government payment, what would you consider a fair addition to the cash market price on a sale to the Government? — *Ans. At least ten per cent.*"

"*Cross-Question* 52. Among Boston merchants what is the character of the house of Smith Brothers & Co. for integrity and fair dealing? — *Ans. A No.* 1."

Such is the testimony of a Government witness. In the face of this testimony, concurring with the reason of the case, it is hard to tolerate the allegation against these respondents founded on price. Indeed, it is hard to tolerate the allegation on any ground.

Under these seven heads, this whole case, so far as concerns the contract for tin, may be considered. It appears that the loss to the United States, from the delivery of Revely instead of what is called Banca, was not more than one hundred dollars in a mass of transactions amounting to more than one million two hundred thousand dollars; that, according to extensive and long-continued usage, Revely is included under Banca; that, according to usage at the Navy Yard, it was treated as Banca; that the whole transaction and the delivery were open and without any concealment; that Revely was actually accepted by the officers of the Government in performance of the contract; that the respondents never expected to supply other than Revely; and,

lastly, that the price paid shows that Revely was intended. This is enough. I forbear to go into the evidence of founders and plumbers, derived from experience, of assayers and chemists, derived from analysis of the two tins, and also of business men, as to their comparative value, — for all this is superfluous. To charge fraud against the respondents under such circumstances is cruel, irrational, preposterous. Their conduct cannot be tortured or twisted into fraud. As well undertake to spin sunbeams into cables, or extract oil from Massachusetts granite.

It is difficult to imagine the origin of these unfortunate proceedings, which, beginning in unheard-of harshness, threaten to end in unexampled injustice, unless arrested by the President. But there are certain facts which may shed light upon some of the hidden springs. Nobody supposes that the able and candid Head of the Navy Department became acquainted with this prosecution until after it had been already conceived, shaped, and set in motion. Others in the Department used its great powers, if not for purposes of oppression, at least recklessly and unaccountably.

It appears that Franklin W. Smith, one of the respondents, published a pamphlet, in which he exposed abuses in the contract system of the Navy Department; and it is understood that sundry officials felt aggrieved by these disclosures. The spirit of these officials appears sufficiently in the following extract from a letter of a Government witness, holding an important position in the Navy Department, addressed to another witness, himself also an official.

"I have been summoned before the Select Committee of the Senate for investigating frauds in Naval Supplies; and

if the wool don't fly, it won't be my fault. Norton, the Navy Agent, has complained that I have interfered with his business : he and his friend Smith are *dead cocks in the pit. We have got a sure thing on them in the tin business.* They that dance must pay the fiddler."

The writer of this letter, after appearing before the Senate Committee at a later day, came on from Washington to appear before the court-martial at Charlestown as a witness against the respondents, where he underwent a cross-examination on which I forbear to comment. If the prosecution did not originate in the spirit which fills his letter, it is evident that this spirit entered into it. "If the wool don't fly, it won't be my fault"; "Dead cocks in the pit"; "A sure thing on them in the tin business" : such are the countersigns adopted by the agent of this dark proceeding, showing clearly two things: first, the foregone conclusion, that these respondents were to be sacrificed ; and, secondly, that the case turned on "the tin business."

It is hard that citizens enjoying a good name, who had the misfortune to come into business relations with the Government, should be exposed to such a spirit ; that they should be dragged from their homes, and hurried to a military prison ; that, though civilians, they should be treated as military offenders ; that they should be compelled to undergo a protracted trial by court-martial, damaging their good name, destroying their peace, breaking up their business, and subjecting them to untold expense, — when, at the slightest touch, the whole case vanishes into thin air, leaving behind nothing but the incomprehensible spirit in which it had its origin.

Of course, the findings and sentence of the Court

ought, without delay, to be set aside. But this is only the beginning of justice. Some positive reparation should be made to citizens who have been so deeply injured.

CHARLES SUMNER.

WASHINGTON, March 17, 1865.

TO THE PRESIDENT OF THE UNITED STATES.

The President promptly overruled the judgment and sentence. The result was received with manifestations of joy. The defendants, whose cruel prosecution had been protracted for six months, had an ovation in the congratulations of their friends and fellow-citizens. Strangers at a distance, feeling that public liberty had suffered through them, sent their sympathy. The press gave expression to the prevailing sentiment. Nor was Mr. Sumner forgotten. The defendants made haste by telegraph to say: "Accept the lasting gratitude of Smith Brothers, their families, and their many friends." Others wrote in the same spirit, — as, for instance, J. C. Hoadley, of New Bedford, who, though not knowing the sufferers, said: "I thank you, in the name of all fair dealing, for your opinion upon the case of Franklin W. Smith"; and John Clark, who, having been connected with the press in Boston, had passed into the public service, wrote from Norfolk: —

"Will you permit me to thank you for your able exposition of the case of the Smith Brothers? I do not know those parties; but I am interested in public liberty, and I have seen no abler defender of it, since the beginning of the war, than you have shown yourself to be on this occasion. I thank you, Sir."

From these expressions it appears that the effort of Mr. Sumner was regarded as not only a defence of the individual citizen, but a contribution to good government. The testimony of Mr. Clark was of the more value, as he had not been accustomed to sympathize with Mr. Sumner in his public course.

Independent of its character, this case has an incidental interest. It was one of the last, if not the last, having a personal relation, that ever occupied the mind of President Lincoln. His indorsement, overruling the judgment and sentence, bears date March 18th. This was Saturday. Meanwhile the Rebellion was about to fall, and the President left Washington, by boat, Thursday, March 23d, for City Point, the headquarters of the Army of Virginia, where he remained till after the

surrender of Richmond, returning to Washington Sunday evening, April 9th, and being assassinated Friday evening, April 14th.

Some circumstances associated with this case help exhibit the character of the President. They will be stated briefly. As soon as Mr. Sumner had prepared his Opinion, he hurried to the President. It was late in the afternoon, and the latter was about entering his carriage for a drive, when Mr. Sumner arrived with the papers in his hand. He at once mentioned the result he had reached, and added that it was a case for instant action. The President proposed that he should return the next day, when he would consider it with him. Mr. Sumner rejoined, that, in his opinion, the President ought not to sleep on the case, — that he should interfere promptly for the relief of innocent fellow-citizens, — and urged, that, if Abraham Lincoln had suffered unjust imprisonment as a criminal, with degradation before his neighbors, an immense bill of expense, a trial by court-martial, and an unjust condemnation, he would cry out against any postponement of justice for a single day. The President, apparently impressed by Mr. Sumner's earnestness and his personal appeal, appointed eleven o'clock that evening, when he would go over the case, and hear Mr. Sumner's Opinion.

Accordingly, at eleven o'clock that evening, in the midst of a thunder-storm, filling the streets with water, and threatening chimneys, Mr. Sumner made his way to the Presidential mansion. At the very hour named he was received, and at the request of the President proceeded to read his Opinion. The latter listened attentively, with occasional comments, and at the close showed his sympathy with the respondents. It was now twenty minutes after midnight, when the President said that he would write his conclusion at once, and that Mr. Sumner must come and hear it the next morning, — "when I open shop," said he. "And when do you open shop?" Mr. Sumner inquired. "At nine o'clock," was the reply. At that hour Mr. Sumner was in the office he had left after midnight, when the President came running in, and read at once the indorsement in his own handwriting, as follows: —

"I am unwilling for the sentence to stand and be executed, to any extent, in this case. In the absence of a more adequate motive than the evidence discloses, I am wholly unable to believe in the existence of criminal or fraudulent intent on the part of one of such well-established good character as is the accused. If the evidence went as far toward establishing a guilty profit of one or two hundred thousand dollars, as it does of one or two hundred dollars, the case would, on the question of guilt, bear a far

different aspect. That on this contract, involving from one million to twelve hundred thousand dollars, the contractors should attempt a fraud which at the most could profit them only one or two hundred, or even one thousand dollars, is to my mind beyond the power of rational belief. That they did not, in such a case, strike for greater gains proves that they did not, with guilty or fraudulent intent, strike at all. The judgment and sentence are disapproved and declared null, and the accused ordered to be discharged.

"A. Lincoln.

"March 18, 1865."

Then followed an incident as original as anything in the life of Henry the Fourth, of France, or of a Lacedæmonian king. As Mr. Sumner was making an abstract of the indorsement for communication by telegraph to the anxious parties, the President broke into quotation from Petroleum V. Nasby, and, seeing that his visitor was less at home than himself in this patriotic literature, he said, "I must initiate you," and then repeated with enthusiasm the message he had sent to the author: "For the genius to write these things I would gladly give up my office." Then rising and turning to a standing-desk behind, he opened it and took out a pamphlet collection of the letters already published, which he proceeded to read aloud, evidently enjoying it much. For the time he seemed to forget the case he had just decided, and Presidential duties. This continued more than twenty minutes, when Mr. Sumner, thinking there must be many at the door waiting to see the President on graver matters, took advantage of a pause, and, thanking him for the lesson of the morning, left. Some thirty persons, including Senators and Representatives, were in the anteroom as he passed out.[1]

Though with the President much during the intervening days before his death, this was the last business Mr. Sumner transacted with him.

[1] This incident is related by Mr. Sumner in his Introduction to the Boston edition of the Nasby Letters, in 1872.

RESPECT FOR THE MEMORY OF ABRAHAM LINCOLN.

RESOLUTION ADOPTED AT A MEETING OF SENATORS AND REPRESENTATIVES, APRIL 17, 1865.

PRESIDENT LINCOLN breathed his last on the morning of Saturday, April 15th. Congress not being in session, there was a meeting of Senators and Representatives then in Washington, April 17th, at noon, when Hon. Lafayette S. Foster, President *pro tempore* of the Senate, was called to the Chair, and Hon. Schuyler Colfax was chosen Secretary. Senator Foot, of Vermont, stated the object of the meeting. On motion of Mr. Sumner, a Committee of five from each House was ordered to report at four o'clock, P. M., on the action proper for the meeting. The Chair appointed Mr. Sumner, Mr. Harris, of New York, Mr. Reverdy Johnson, of Maryland, Mr. Ramsey, of Minnesota, and Mr. Conness, of California, on the part of the Senate, also Mr. Washburne, of Illinois, Mr. Smith, of Kentucky, Mr. Schenck, of Ohio, Mr. Pike, of Maine, and Mr. Coffroth, of Pennsylvania, on the part of the House of Representatives. On motion of Mr. Schenck, the Chairman and Secretary of the meeting were added to the Committee.

The Committee reported a list of pall-bearers for the funeral, and also a Congressional Committee of one from each State to accompany the remains of the late President to Illinois, which were adopted by the meeting.

They also reported the following resolution, drawn by Mr. Sumner, which was unanimously agreed to.

THE members of the Senate and House of Representatives now assembled in Washington, humbly confessing their dependence upon Almighty God, who rules all that is done for human good, make haste, at

this informal meeting, to express the emotions with which they have been filled by the appalling tragedy that has deprived the nation of its head and covered the land with mourning, and, in further declaration of their sentiments, resolve unanimously, —

1. That, in testimony of their veneration and affection for the illustrious dead, who has been permitted, under Providence, to do so much for his country and for Liberty, they will unite in the funeral services, and by an appropriate committee will accompany his remains to their place of burial in the State from which he was taken for the national service.

2. That in the life of Abraham Lincoln, who, by the benignant favor of republican institutions, rose from humble beginnings to the height of power and fame, they recognize an example of purity, simplicity, and virtue which should be a lesson to mankind; while in his death they acknowledge a martyr whose memory will become more precious as men learn to prize those principles of constitutional order, and those rights, civil, political, and human, for which he was made a sacrifice.

3. That they invite the President of the United States, by solemn proclamation, to recommend that the people of the United States should assemble on a day appointed by him, in public testimony of their grief, and to dwell on the good that has been done on earth by him we now mourn.

4. That a copy of these resolutions be communicated to the President of the United States, and also to the afflicted widow of the late President, as an expression of sympathy in her great bereavement.

RIGHT AND DUTY OF COLORED FELLOW-CITIZENS IN THE ORGANIZATION OF GOVERNMENT.

LETTER TO COLORED CITIZENS OF NORTH CAROLINA, MAY 13, 1865.

THE letter to Mr. Sumner by colored citizens is the first public expression of their interest in the suffrage. The answer was according to the sentiments Mr. Sumner had early declared.

WILMINGTON, N. C., April 29, 1865.

HON. CHARLES SUMNER, *Washington.*

DEAR SIR, — We, the undersigned citizens, Executive Board of the Colored Union Leagues of this city, respectfully ask your attention to the subject of Reconstruction in this State, and for a few plain directions in relation to a proper stand for us to make.

We forward also a copy of the *Herald*, containing an article on Reconstruction, which causes us much anxiety, in connection with other facts that are constantly pressed upon our attention in this Rebel State, although much is said concerning its loyalty that is unreliable and untrue. Many of us have done service for the United States Government, at Fort Fisher and elsewhere, and we shrink with horror at the thought that we may be left to the tender mercies of our former Rebel masters, who have taken the oath, but are filled with malice, and swear vengeance against us as soon as the military are withdrawn.

We are loyal colored citizens, and strive in all things so to conduct ourselves that no just cause of complaint may exist, although we suffer much from the unwillingness of the Secessionists to regard us as *freemen*, and look up to the flag of our country with trembling anxiety, knowing that the *franchise* alone can give us security for the future.

We speak with moderation and care, we lay no charges, but we fear that an ill-judged lenity to Rebels in this State will leave little to us and our children but the bare name of freedmen. We remember Louisiana! Better "smash the egg" than permit it to produce a viper.

We beg an early answer. Direct, simply, "Alfred Howe, Wilmington, North Carolina." Do not frank your letter: I send a stamp. For reference,

Jonathan C. Gibbs mentions the name of Rev. H. H. Garnett, a colored Presbyterian minister in Washington, and Hon. Judge Kelley, from Pennsylvania.

ALFRED HOWE, *President.*

D. SADGENAR, OWEN BURNEY,
H. D. SAMPSON, HENRY TAYLOR,
JONATHAN C. GIBBS, RICHARD REED.

WASHINGTON, May 13, 1865.

GENTLEMEN, — I am glad that the colored citizens of North Carolina are ready to take part in the organization of government. It is unquestionably their right and duty.

I see little chance of peace or tranquillity in any Rebel State, unless the rights of all are recognized without distinction of color. On this foundation we must build.

The article on Reconstruction to which you call my attention proceeds on the idea, born of Slavery, that persons with a white skin are the only "citizens." This is a mistake.

As you do me the honor to ask me the proper stand for you to make, I have no hesitation in replying that you must insist on all the rights and privileges of a citizen. They belong to you. They are yours; and whoever undertakes to rob you of them is a usurper and impostor.

Of course you will take part in any primary meetings for political organization, open to citizens generally, and will not miss any opportunity to show your loyalty and fidelity.

Accept my best wishes, and believe me, Gentlemen,

Faithfully yours,

CHARLES SUMNER.

This letter was extensively circulated. The New York *Herald* printed it in an editorial article entitled "The Chase-Sumner Political Movement — Social War Threatened," where it said: —

"As soon as Mr. Johnson assumed the reins of the Government, Mr. Sumner made an effort to control his official action and secure his assistance in carrying on this appendix warfare to the Abolition question, and thus plunge the country into a sanguinary social war. Finding it impossible to draw President Johnson into his schemes, he at once plants himself in opposition. . . . .

"This letter, although short, is explicit and unmistakable in its meaning. Its purpose is evident to the most casual observer. Knowing, as he must, at the time, that the President held that the question of conferring the privilege of suffrage upon the colored people of the South rested exclusively with the States, he endeavors to stir up a feud and create a dissatisfaction among this class. Like the speech of Chief Justice Chase, its whole tendency is to incite the negroes to insurrection, by giving them the impression that the Government is against them. There is not a word in the communication counselling obedience or respect to the laws of the Government. They ask him for direction, and he, in response, counsels them to take part in the organization of the Government, — that it is their right and duty. In the face of the fact that there is no law in their State or in the Constitution of the United States recognizing that right, he tells them that those who oppose them are usurpers and impostors."

HOPE AND ENCOURAGEMENT FOR COLORED FELLOW-CITIZENS.

Letter to the Editor of "The Leader," in Charleston, S. C., May, 1865.

The following brief note appeared in the first number of *The Leader*, a weekly paper which began at Charleston, 1865.

I TRUST that you will do everything possible to arouse hope and encouragement in the colored people. Let them know that their friends will stand by them. All white persons who have any regard for the Declaration of Independence ought to unite in favor of its principles, and insist that they shall be made the foundation of the new order of things. Courage! the cause cannot fail.

Believe me, dear Sir, faithfully yours,

Charles Sumner.

PROMISES OF THE DECLARATION OF INDEPENDENCE, AND ABRAHAM LINCOLN.

EULOGY ON ABRAHAM LINCOLN, BEFORE THE MUNICIPAL AUTHORITIES OF THE CITY OF BOSTON, JUNE 1, 1865.

Think nothing of me, take no thought for the political fate of any man whomsoever, but come back to the truths that are in the Declaration of Independence. You may do anything with me you choose, if you will but heed these sacred principles. You may not only defeat me for the Senate, *but you may take me and put me to death.* — ABRAHAM LINCOLN: *Crosby's Life of Lincoln*, p. 33.

They [colored people having the ballot] would probably help, in some trying time to come, to keep the jewel of Liberty in the family of Freedom. — IBID., *Letter to Michael Hahn, of Louisiana, March* 13, 1864: *McPherson's Political History of the United States during Reconstruction*, p. 20, note.

Omnia incrementa sua sibi debuit, vir novitatis nobilissimæ. —Velleius Paterculus, *Historia*, Lib. II. cap. 34, § 3.

Offensarum inimicitiarumque minime memor executorve. — Suetonius, *Vespasianus*, Cap. XIV.

EULOGY.

IN the universe of God there are no accidents. From the fall of a sparrow to the fall of an empire or the sweep of a planet, all is according to Divine Providence, whose laws are everlasting. No accident gave to his country the patriot we now honor. No accident snatched this patriot, so suddenly and so cruelly, from his sublime duties. Death is as little an accident as life. Never, perhaps, in history has this Providence been more conspicuous than in that recent procession of events, where the final triumph is wrapped in the gloom of tragedy. It is our present duty to find the moral of the stupendous drama.

For the second time in our annals, the country is summoned by the President to unite, on an appointed day, in commemorating the life and character of the dead. The first was on the death of GEORGE WASHINGTON, when, as now, a day was set apart for simultaneous eulogy throughout the land, and cities, towns, and villages all vied in tribute. Since this early observance for the Father of his Country more than half a century has passed, and now it is repeated in tribute to ABRAHAM LINCOLN.

Thus are WASHINGTON and LINCOLN associated in the grandeur of their obsequies. But this association is not

accidental. It is from the nature of things, and because the part Lincoln was called to perform resembled in character the part performed by Washington. The work left undone by Washington was continued by Lincoln. Kindred in service, kindred in patriotism, each is surrounded in death by kindred homage. One sleeps in the East, the other sleeps in the West; and thus, in death, as in life, one is the complement of the other.

The two might be compared after the manner of Plutarch; but it must suffice for the present to glance only at points of resemblance and of contrast, so as to recall the parts they respectively performed.

Each was head of the Republic during a period of surpassing trial; and each thought only of the public good, simply, purely, constantly, so that single-hearted devotion to country will always find a synonym in their names. Each was national chief during a time of successful war. Each was representative of his country at a great epoch of history. Here, perhaps, resemblance ends and contrast begins. Unlike in origin, conversation, and character, they were unlike also in the *ideas* they served, except as each was servant of his country. The war conducted by Washington was unlike the war conducted by Lincoln, as the peace which crowned the arms of the one was unlike the peace which began to smile upon the other. The two wars did not differ in scale of operations and in tramp of mustered hosts more than in the ideas involved. The first was for National Independence; the second was to make the Republic one and indivisible, on the indestructible foundation of Liberty and Equality. The first cut the connection with the mother country, and opened the way to the duties and advantages of Popular Government; *the sec-*

ond will have failed, unless it consummates all the original promises of the Declaration our fathers took upon their lips when they became a Nation. In the relation of cause and effect the first was natural precursor and herald of the second. National Independence became the first epoch in our history, whose mighty import was exhibited when Lafayette boasted to the First Consul of France, that, though its battles were but skirmishes, they decided the fate of the world.[1]

The Declaration of our fathers, entitled simply "The Unanimous Declaration of the Thirteen United States of America," is known familiarly as the Declaration of Independence, because the remarkable words with which it concludes made independence the final idea, to which all else was tributary. Thus did the representatives of the United States of America in General Congress assembled solemnly publish and declare "that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown; and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; . . . . and for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor." To sustain this mutual pledge Washington drew his sword and led the national armies, until at last, by the Treaty of Peace in 1783, Independence was acknowledged.

Had the Declaration been confined to this pledge, it would have been less grand. Much as it might have

[1] "Ce furent les plus grands intérêts de l'univers décidés par des rencontres de patrouilles." — *Mémoires*, publiés par sa Famille, Tom. V. p. 167.

been to us, it would have been less of a warning and trumpet-note to the world. There were two other pledges it made. One was proclaimed in the designation "United States of America," which it adopted as the national name; and the other was proclaimed in those great words, fit for the baptismal vows of a Republic, — "We hold these truths to be self-evident: *that all men are created equal;* that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, *deriving their just powers from the consent of the governed.*" By the sword of Washington Independence was secured; but the Unity of the Republic and the principles of the Declaration were left exposed to question. From that early day, through various chances, they were assailed and openly dishonored, until at last the Republic was constrained to take up arms in their defence. And yet, since enmity to the Union proceeded entirely from enmity to the great ideas of the Declaration, history must record that the question of the Union itself was absorbed in the grander conflict to uphold the primal truths our fathers had solemnly proclaimed.

Such are the two great wars where these two chiefs bore each his part. Washington fought for National Independence, and triumphed, making his country an example to mankind. Lincoln drew a reluctant sword to save those great ideas, essential to the life and character of the Republic, which unhappily the sword of Washington failed to put beyond the reach of assault.

By no accident did these two great men become representatives of their country at these two different ep-

ochs, so alike in peril, and yet so unlike in the principles involved. Washington was the natural representative of National Independence. He might also have represented National Unity, had this principle been challenged to bloody battle during his life; for nothing was nearer his heart than the consolidation of our Union, which, in his letter to Congress transmitting the Constitution, he declares to be "the greatest interest of every true American."[1] Then again, in a remarkable letter to John Jay, he plainly says that he does "not conceive we can exist long as a nation without having lodged somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the State governments extends over the several States."[2] But another person was needed, of different birth and simpler life, to represent the ideas now impugned.

Washington was of ancient family, traced in English heraldry. Some of his ancestors sleep in close companionship with the noble name of Spencer. By inheritance and marriage he was rich in lands, and, let it be said in respectful sorrow, rich also in slaves, so far as slaves breed riches rather than curses. At the age of fourteen he refused a commission as midshipman in the British Navy. At the age of nineteen he was Adjutant General, with the rank of major. At the age of twenty-one he was selected by the British Governor of Virginia as Commissioner to the French posts. At the age of twenty-two he was at the head of a regiment, and was thanked by the House of Burgesses. Early in life he became an observer of form and ceremony. Always

[1] Journal of the Federal Convention, September 12, 1787, p. 368.

[2] Letter, August 1, 1786: Writings, ed. Sparks, Vol. IX. pp. 187, 188.

strictly just, according to prevailing principles, and at his death ordering the emancipation of his slaves, he was more a general and statesman than philanthropist; nor did he seem inspired, beyond the duties of patriotism, to active sympathy with Human Rights. In the ample record of what he wrote or said there is no word of adhesion to the great ideas of the Declaration. Such an origin, such an early life, such opportunities, such a condition, such a character, were all in contrast with the origin, early life, opportunities, condition, and character of him we commemorate to-day.

Abraham Lincoln was born, and, until he became President, always lived in a part of the country which at the period of the Declaration of Independence was a savage wilderness. Strange, but happy, Providence, that a voice from that savage wilderness, now fertile in men, was inspired to uphold the pledges and promises of the Declaration! The Unity of the Republic, on the indestructible foundation of Liberty and Equality, was vindicated by the citizen of a community which had no existence when the Republic was formed.

His family may be traced to Quaker stock in Pennsylvania, but it removed first to Virginia, and then, as early as 1780, to the wilds of Kentucky, which at that time was only an outlying territory of Virginia. His grandfather and father both lived in peril from Indians, and the former perished by their knife. The future President was born in a log-house. His mother could read, and perhaps write. His father could do neither, except so far as to sign his name rudely, like a noble of Charlemagne. Trial, privation, and labor entered into his early life. Only at seven years of age, for a very

brief period, could he enjoy school, carrying with him Dilworth's Spelling-Book, one of the three volumes that formed the family library. Shortly afterwards his father turned his back upon that Slavery which disfigured Kentucky, and with his poor effects and the future chief-magistrate set his face towards Indiana, already guarded against Slavery by the famous Northwestern Ordinance. Reaching the chosen home in a land of Liberty, the son, who was less than eight years old, aided his father in building a shelter of poles, fastened together by notches, and filled in with mud. This preceded the log cabin, where for twelve years afterwards he grew in character and knowledge, as in stature, learning to write as well as read, and especially enjoying Bunyan's Pilgrim's Progress, Æsop's Fables, Weems's Life of Washington, and the Life of Henry Clay. At the age of ten he lost his mother. At the age of nineteen he became a hired hand, at eight dollars a month, on a flatboat laden with stores for plantations on the Mississippi, and in this way floated on that lordly river to New Orleans, little dreaming that only a few years later iron-clad navies would at his command float on that same proud stream. Here also was he learner. From the slaves he saw on the banks he took a lesson of Liberty, which gained new charms by comparison with Slavery.

In 1830 the father removed to Illinois, transporting his goods in a wagon drawn by oxen, and the future President, then twenty-one years of age, drove the team. Another cabin was built in primitive rudeness, and the future President split the rails to inclose the lot. In our history these became classical, and the name of rail-splitter more than the degree of a college, — not

that the splitting of rails is any way meritorious, but because the people are proud to trace aspiring talent back to humble beginnings, and they found in this tribute new opportunity to vindicate the dignity of free labor, and repel the insolent pretensions of Slavery.

His youth was now spent, and at the age of twenty-one he left his father's house to begin the world. A small bundle, a laughing face, and an honest heart, — these were his simple possessions, together with that unconscious character and intelligence which his country learned to prize. In the long history of worth depressed there is no instance of such contrast between the depression and the triumph, — unless, perhaps, his successor as President may share with him this distinction. No academy, no university, no Alma Mater of science or learning nourished him. No government took him by the hand and gave him the gift of opportunity. No inheritance of land or money fell to him. No friend stood by his side. He was alone in poverty: and yet not all alone. There was God above, who watches all, and does not desert the lowly. Plain in person, life, and manners, and knowing absolutely nothing of form or ceremony, for six months with a village schoolmaster as his only teacher, he grew up in companionship with the people, with Nature, with trees, with the fruitful corn, and with the stars. While yet a child, his father had borne him away from a soil wasted by Slavery, and he was now citizen of a Free State, where Free Labor had been placed under safeguard of irreversible compact and fundamental law. And thus he took leave of youth, happy at least that he could go forth under the day-star of Liberty.

The early hardships were prolonged into manhood.

He labored on a farm as hired hand, and then a second time in a flatboat measured the winding Mississippi to its mouth. At the call of the Governor of Illinois for troops against Black Hawk, the Indian chief, he sprang forward with patriotic ardor, most prompt to enlist at the recruiting station in his neighborhood. The choice of his associates made him captain. After the war he became surveyor, and to his death retained a practical and scientific knowledge of this business. Here again was a parallel with Washington. In 1834 he was elected to the Legislature of Illinois, and three years later was admitted to the practice of the law. He was now twenty-eight years old, and, under the benignant influence of republican institutions, he had already entered upon the double career of lawyer and legislator, with the gates of the mysterious Future slowly opening before him.

How well he served in these two characters I pause not to tell. It is enough, if I exhibit the stages of advance, that you may understand how he became representative of his country at so grand a moment. It is needless to say that his opportunities of study as a lawyer were small, but he was industrious in each individual case, and thus daily added to his stores of professional experience. Faithful in all things, most conscientious in conduct at the bar, so that he could not be unfair to the other side, and admirably sensitive to the behests of justice, so that he could not argue on the wrong side, he acquired a name for honesty, which, beginning with the community where he lived, became proverbial throughout his State, — while his genial, mirthful, overflowing nature, apt at anecdote and story, made him, where personally known, a favorite compan-

ion. His opinions on public questions were formed early, under the example and teaching of Henry Clay, and he never departed from them, though constantly tempted, or pressed by local majorities, in the name of a false democracy. It is interesting to know that thus early he espoused those two ideas which entered so largely into the terrible responsibilities of his last years, — I mean the Unity of the Republic, and the supreme value of Liberty. He did not believe that a State, in its own mad will, had a right to break up this Union. As reader of Congressional speeches, and student of what was said by the political teachers of that day, he was no stranger to those marvellous efforts of Daniel Webster, when, in reply to the treasonable pretensions of Nullification, the great orator of Massachusetts asserted the indestructibility of the Union, and the folly of those who assail it. On the subject of Slavery, he had the experience of his own family and the warnings of his own conscience. Naturally, one of his earliest acts in the Legislature of Illinois was a protest in the name of Liberty.

At a later day, he was in Congress for a single term, beginning in December, 1847, being the only Whig Representative from Illinois. His speeches during this brief period have the characteristics of his later productions. They are argumentative, logical, and spirited, with quaint humor and sinewy sententiousness. His votes were constant against Slavery. For the Wilmot Proviso he voted, according to his own statement, "in one way and another, about forty times." His vote is recorded against the pretence that slaves are property under the Constitution. From Congress he passed again to his profession. The day was at hand, when all

his powers, enlarged by experience and quickened to highest activity, would be needed to repel that haughty domination already overshadowing the Republic.

The next field of conflict was in his own State, with no less an antagonist than Stephen A. Douglas, at that time in alliance with the Slave Power. The too famous Kansas and Nebraska Bill, introduced by the latter into the Senate, assumed to set aside the venerable safeguard of Freedom in the territory west of Missouri, under pretence of allowing the inhabitants "to vote Slavery up or to vote it down," and this barbarous privilege was called by the fancy name of Popular Sovereignty. The champion of Liberty did not hesitate to denounce this most baleful measure in a series of popular addresses, where truth, sentiment, humor, and argument all blended. As the conflict continued, he was brought forward for the Senate against its able author. The debate that ensued is one of the most memorable in our political history, whether we consider the principles involved or the way it was conducted.

It commenced with a close, well-woven speech from the Republican candidate, showing insight into the actual condition of things, in which were these memorable words: "'A house divided against itself cannot stand.' I believe this Government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved, I do not expect the house to fall, but I do expect it will cease to be divided. It will become all one thing, or all the other."[1] Here was the true starting-point. Only a few days before his death, in reply to my inquiry, if at the time he had any doubt

[1] Speech at Springfield, June 17, 1858: Political Debates between Hon. Abraham Lincoln and Hon. Stephen A. Douglas in 1858, p. 1.

about this declaration, he said, "Not in the least. It was clearly true, and time has justified me." With like plainness he exposed the Douglas pretence of Popular Sovereignty as meaning simply, "that, if any *one* man choose to enslave *another*, no *third* man shall be allowed to object,"[1] and he announced his belief in the existence of a conspiracy to perpetuate and nationalize Slavery, of which the Kansas and Nebraska Bill and the Dred Scott decision were essential parts. Such was the character of this debate at the beginning, and so it continued on the lips of our champion to the end.

The inevitable topic to which he returned with most frequency, and to which he clung with all the grasp of his soul, was *the practical character of the Declaration of Independence in announcing the Liberty and Equality of all Men.* No idle words were there, but substantial truth, binding on the conscience of mankind. I know not if this grand pertinacity has been noticed before; but I deem it a duty to declare that to my mind it is by far the most important incident of that controversy, and perhaps the most interesting in the biography of the speaker. Nothing previous to his nomination for the Presidency is comparable to it. Plainly his whole subsequent career took impulse and complexion from that championship. And here, too, is our first debt of gratitude. The words he then uttered live after him, and nobody now hears how he then battled without feeling a new motive to fidelity in support of Human Rights.

As early as 1854, in a speech at Peoria against the Kansas and Nebraska Bill, after denouncing Slavery as a "monstrous injustice," which "enables the enemies of free institutions to taunt us as hypocrites," and "causes

[1] Speech at Springfield, June 17, 1858: Political Debates, p. 2.

the real friends of Freedom to doubt our sincerity, he complains especially that "it forces so many really good men amongst ourselves *into open war with the very fundamental principles of civil liberty, criticizing the Declaration of Independence.*"[1] Thus, according to him, criticism of the Declaration was the climax of infidelity as citizen.

Mr. Douglas opened the debate, on his side, at Chicago, July 9, 1858, by a speech, where he said, among other things, "I am opposed to negro equality. I repeat, that this nation is a white people. . . . . I am opposed to taking any step that recognizes the negro man or the Indian as the equal of the white man. I am opposed to giving him a voice in the administration of the Government."[2] Thus was the case stated for Slavery.

To this speech the Republican candidate replied promptly, and did not forget his championship. Quoting the great words, "We hold these truths to be self-evident, that all men are created equal," he proceeds:—

"That is the electric cord in that Declaration that links the hearts of patriotic and liberty-loving men together, that will link those patriotic hearts as long as the love of freedom exists in the minds of men throughout the world. . . . . I should like to know, if, taking this old Declaration of Independence, which declares that all men are equal, upon principle, and making exceptions to it, where will it stop? If one man says it does not mean a negro, why not another say it does not mean some other man? If that Declaration is not the truth, let us get the statute-book in which we find it and tear it out. Who is so bold as to do it? If it is not true, let us tear it out. [*Cries of "No, no!"*] *Let us stick to it, then; let us stand firmly by it, then.*"

[1] Political Debates, p. 75.

[2] Ibid., p. 12.

Noble utterance, worthy of perpetual memory! And he finished his speech with a farewell truly apostolic:—

"I leave you, hoping that the lamp of Liberty will burn in your bosoms until there shall no longer be a doubt that all men are created free and equal."[1]

He has left us now, and for the last time. I catch the closing benediction of that speech, already sounding through the ages like a choral harmony.

The debate continued from place to place. At Bloomington, July 16th, Mr. Douglas denied again that colored persons could be citizens, and then broke forth upon the champion:—

"I will not quarrel with Mr. Lincoln for his views on that subject. I have no doubt he is conscientious in them. I have not the slightest idea but that he conscientiously believes that a negro ought to enjoy and exercise all the rights and privileges given to white men; but I do not agree with him. . . . . *I believe that this government of ours was founded on the white basis.* I believe that it was established by white men. . . . . I do not believe that it was the design or intention of the signers of the Declaration of Independence or the framers of the Constitution to include negroes, Indians, or other inferior races, with white men, as citizens. . . . . *He wants them to vote. I am opposed to it. If they had a vote, I reckon they would all vote for him in preference to me, entertaining the views I do.*"[2]

Then again at Springfield, the next day, Mr. Douglas repeated his denial that the colored man was embraced by the Declaration, and thus argued for the exclusion:—

[1] Speech at Chicago, July 10, 1858: Political Debates, pp. 23, 24.
[2] Ibid., pp. 35, 36.

"Remember that at the time the Declaration was put forth, every one of the Thirteen Colonies were slaveholding colonies, — every man who signed that Declaration represented slaveholding constituents. Did those signers mean by that act to charge themselves and all their constituents with having violated the law of God in holding the negro in an inferior condition to the white man? And yet, if they included negroes in that term, they were bound, as conscientious men, that day and that hour, not only to have abolished Slavery throughout the land, *but to have conferred political rights and privileges on the negro, and elevated him to an equality with the white man.* . . . . The Declaration of Independence only included the white people of the United States." [1]

On the same evening, at Springfield, the Republican candidate, while admitting that negroes are not "our equal in color," thus again spoke for the comprehensive humanity of the Declaration: —

"*I adhere to the Declaration of Independence. If Judge Douglas and his friends are not willing to stand by it, let them come up and amend it. Let them make it read, that all men are created equal except negroes.* Let us have it decided, whether the Declaration of Independence, in this blessed year of 1858, shall be thus amended. In his construction of the Declaration last year, he said it only meant that Americans in America were equal to Englishmen in England. Then, when I pointed out to him that by that rule he excludes the Germans, the Irish, the Portuguese, and all the other people who have come amongst us since the Revolution, he reconstructs his construction. In his last speech he tells us it meant Europeans. I press him a little further, and ask if it meant to include the Russians in Asia. Or does he mean to exclude that vast population from the prin-

[1] Political Debates, pp. 51, 52.

ciples of our Declaration of Independence? I expect erelong he will introduce another amendment to his definition. He is not at all particular. . . . . *It may draw white men down, but it must not lift negroes up.*" [1]

Words like these are gratefully remembered. They make the Declaration, what the Fathers intended, no mean proclamation of oligarchic egotism, but a charter and freehold for all mankind.

At Ottawa, August 21st, Mr. Douglas, still excluding the colored men from the Declaration, exclaimed: —

"I believe this Government was made on the white basis. I believe it was made by white men, for the benefit of white men and their posterity forever." [2]

Again the Republican champion took up the strain.

"Henry Clay once said of a class of men who would repress all tendencies to Liberty and ultimate Emancipation, that they must, if they would do this, go back to the era of our Independence, and muzzle the cannon which thunders its annual joyous return, — they must blow out the moral lights around us, — they must penetrate the human soul, and eradicate there the love of Liberty; and then, and not till then, could they perpetuate Slavery in this country. To my thinking, Judge Douglas is, by his example and vast influence, doing that very thing in this community, when he says that the negro has nothing in the Declaration of Independence." [3]

At Jonesboro', September 15th, Mr. Douglas once more assailed the rights of the colored race.

"I am aware that all the Abolition lecturers that you find travelling about through the country are in the habit

[1] Political Debates, p. 63. [2] Ibid., p. 71. [3] Ibid., p. 83.

of reading the Declaration of Independence to prove that all men were created equal and endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness. Mr. Lincoln is very much in the habit of following in the track of Lovejoy in this particular, by reading that part of the Declaration of Independence to prove that the negro was endowed by the Almighty with the inalienable right of equality with white men. Now I say to you, my fellow-citizens, that, in my opinion, the signers of the Declaration had no reference to the negro whatever, when they declared all men to be created equal."[1]

At Galesburg October 7th, his faithful opponent answered: —

"The Judge has alluded to the Declaration of Independence, and insisted that negroes are not included in that Declaration, and that it is a slander upon the framers of that instrument to suppose that negroes were meant therein; and he asks you, Is it possible to believe that Mr. Jefferson, who penned the immortal paper, could have supposed himself applying the language of that instrument to the negro race, and yet held a portion of that race in slavery? Would he not at once have freed them? I only have to remark upon this part of the Judge's speech, that I believe the entire records of the world, from the date of the Declaration of Independence up to within three years ago, may be searched in vain for one single affirmation from one single man, that the negro was not included in the Declaration. And I will remind Judge Douglas and this audience, that, while Mr. Jefferson was the owner of slaves, as undoubtedly he was, in speaking upon this very subject, he used the strong language, that 'he trembled for his country when he remembered that God was just.'"[2]

[1] Political Debates, p. 116. [2] Ibid., p. 178.

And at Alton, October 15th, he renewed this same testimony.

"I assert that Judge Douglas and all his friends may search the whole records of the country, and it will be a matter of great astonishment to me, if they shall be able to find that one human being three years ago had ever uttered the astounding sentiment that the term 'all men' in the Declaration did not include the negro. Do not let me be misunderstood. I know that more than three years ago there were men, who, finding this assertion constantly in the way of their schemes to bring about the ascendency and perpetuation of Slavery, denied the truth of it. I know that Mr. Calhoun, and all the politicians of his school, denied the truth of the Declaration. I know that it ran along in the mouth of some Southern men for a period of years, ending at last in that shameful, though rather forcible, declaration of Pettit, of Indiana, upon the floor of the United States Senate, that the Declaration of Independence was, in that respect, 'a self-evident lie,' rather than a self-evident truth. But I say, with a perfect knowledge of all this hawking at the Declaration without directly attacking it, that three years ago there never had lived a man who had ventured to assail it in *the sneaking way of pretending to believe it, and then asserting it did not include the negro.*" [1]

In another speech, during the same political contest, the champion spoke immortal words. After setting forth the sublime opening of the Declaration by our fathers, he said: —

"This was their majestic interpretation of the economy of the universe. This was their lofty and wise and noble understanding of the justice of the Creator to His creatures, — yes, Gentlemen, to all His creatures, to the whole great family of man."

[1] Political Debates, p. 225.

Then, lifted by his cause, he appealed to his fellow-countrymen in tones of pathetic eloquence: —

"Think nothing of me, take no thought for the political fate of any man whomsoever, but come back to the truths that are in the Declaration of Independence. You may do anything with me you choose, if you will but heed these sacred principles. You may not only defeat me for the Senate, *but you may take me and put me to death.* While pretending no indifference to earthly honors, I do claim to be actuated in this contest by something higher than an anxiety for office. I charge you to drop every paltry and insignificant thought for any man's success. It is nothing. I am nothing. Judge Douglas is nothing. *But do not destroy that immortal emblem of humanity, the Declaration of American Independence.*" [1]

Thus, at that early day, before war had overshadowed the land, was he ready for the sacrifice. "Take me and put me to death," said he, "but do not destroy that immortal emblem of humanity, the Declaration of American Independence." He has been put to death by the enemies of the Declaration; but, though dead, he will continue to guard that great title-deed of the human race.

The debate ended. An immense vote was cast. There were 126,084 votes for the Republican candidates, 121,940 for the Douglas candidates, and 5,091 for the Lecompton candidates, another class of Democrats; but the supporters of Mr. Douglas had a majority of eight on joint ballot in the Legislature, and he was reëlected to the Senate.

Again returned to his profession, our champion cherished the Declaration. To the Republicans of Boston, who had invited him to unite with them in celebrating

[1] Crosby's Life of Lincoln, pp. 32, 33.

the birthday of Thomas Jefferson, he sent an answer, under date of April 6, 1859, which is a gem in political literature, and here also he asserts the supremacy of those truths for which he had battled so well. In him the West spoke to the East, pleading for Human Rights, as declared by our fathers.

"But, soberly, it is now no child's play to save the principles of Jefferson from total overthrow in this nation.

"One would state with great confidence that he could convince any sane child that the simpler propositions of Euclid are true; but, nevertheless, he would fail utterly with one who should deny the definitions and axioms. The principles of Jefferson are the definitions and axioms of free society, and yet they are denied and evaded with no small show of success. One dashingly calls them 'glittering generalities'; another bluntly calls them 'self-evident lies'; and others insidiously argue that they apply only to 'superior races.'

"These expressions, differing in form, are identical in object and effect, — the supplanting the principles of free government, and restoring those of classification, caste, and legitimacy. They would delight a convocation of crowned heads plotting against the people. They are the van-guard, the miners and sappers, of returning despotism. We must repulse them, or they will subjugate us.

"This is a world of compensations; and he who would *be* no slave must consent to *have* no slave. Those who deny freedom to others deserve it not for themselves, and, under a just God, cannot long retain it.

"All honor to Jefferson, — the man who, in the concrete pressure of a struggle for national independence by a single people, had the coolness, forecast, and capacity to introduce into a merely revolutionary document *an abstract truth, applicable to all men and all times*, and so to embalm it there, that to-day, and in all coming days, it shall be a rebuke and

a stumbling-block to the very harbingers of reappearing tyranny and oppression!"[1]

Next winter the Western champion appeared at New York, and in a remarkable address at the Cooper Institute, February 27, 1860, vindicated the policy of the Fathers and the principles of the Republican party. Showing with curious skill and minuteness the original understanding on the power of Congress over Slavery in the Territories, he demonstrated that the Republican party was not in any just sense sectional; and then exposed the perils from the pretensions of slave-masters, who, not content with requiring that "we must arrest and return their fugitive slaves with greedy pleasure," insisted that the Constitution must be so interpreted as to uphold the idea of property in man. The whole address was subdued and argumentative, while each sentence was like a driven nail, with a concluding rally that was a bugle-call to the lovers of right. "Let us have faith," said he, "that *right makes might*, and in that faith let us to the end dare to do our duty as we understand it."

A few months later, this champion of the Right, who would not see the colored man shut out from the promises of the Declaration, and insisted upon the exclusion of Slavery from the Territories, after summoning his countrymen to their duty, was nominated by a great political party as candidate for President. Local considerations, securing to him the support of certain States beyond any other candidate, exercised a final influence in determining this selection; but it is easy to see how, from position, character, and origin, he was at that

[1] Boston Daily Advertiser, April 14, 1859.

moment especially the representative of his country. The Unity of the Republic was menaced: he was from that vast controlling Northwest which would never renounce its communications with the sea, whether by the Mississippi or by eastern avenues. The birthday Declaration of the Republic was dishonored in the denial of its primal truths: he was already known as a volunteer in its defence. Republican institutions were in jeopardy: he was the child of humble life, through whom republican institutions would stand confessed. These things, so obvious now in the light of history, were less apparent then in the turmoil of party. But that Providence in whose hands are the destinies of nations, which had found out Washington to conduct his country through the War of Independence, now found out Lincoln to wage the new battle for the Unity of the Republic on the foundation of Human Rights.

The election took place. Of the popular votes, Abraham Lincoln received 1,866,452, carrying 180 electoral ballots; Stephen A. Douglas received 1,375,157, carrying 12 electoral ballots; John C. Breckinridge received 847,-953, carrying 72 electoral ballots; and John Bell received 590,631, carrying 39 electoral ballots. By this vote Abraham Lincoln became President. The triumph at the ballot-box was flashed by telegraph over the whole country, from north to south, from east to west. It was answered by defiance from the Slave-Masters, speaking in the name of State Rights and for the sake of Slavery. The declared will of the American people, registered at the ballot-box, was set at nought. The conspiracy of years blazed into day. The National Government, which Alexander H. Stephens characterized as "the best and freest government, the most equal in its

rights, the most just in its decisions, the most lenient in its measures, and the most aspiring in its principles to elevate the race of men, that the sun of heaven ever shone upon,"[1] and which Jefferson Davis himself pronounced "the best government which has ever been instituted by man,"[2] — that National Government, thus painted even by its enemies, was spurned. South Carolina jumped forward first in crime; and before the elected President turned his face from the beautiful Western prairies to enter upon his dangerous duties, State after State had undertaken to abandon its place in the Union, Senator after Senator had dropped from his seat, fort after fort had been seized, and the mutterings of war had begun to fill the air, while the actual President, besotted by Slavery, tranquilly witnessed the gigantic treason, as he sat at ease in the Executive Mansion, and did nothing.

It was time for another to come upon the scene. You cannot forget how he left his village home, never to return, except under the escort of Death. In words of farewell to neighbors thronging about him, he dedicated himself to his country and solemnly invoked the aid of Divine Providence. "I know not," he said, "how soon I shall see you again"; and then, with prophetic voice, announced that a duty devolved upon him "greater than that which has devolved upon any other man since the days of Washington," and asked his friends to pray that he might receive that Divine assistance, without which he could not succeed, but with which success

[1] Speech before the State Convention of Georgia, January 18, 1861: McPherson's Political History of the United States during the Great Rebellion (2d edit.), p. 26.

[2] Speech in the Senate of the United States, December 10, 1860: Congressional Globe, 36th Cong. 2d Sess., p. 29.

was certain. To power and fame others have gone forth with gladness and with song: he went forth prayerfully, as to sacrifice.

Nor can you forget how at each resting-place on the road he renewed his vows, and when at Independence Hall his soul broke forth in homage to the vital truths there declared. Of all that he said on the journey to the National Capital, after farewell to his neighbors, there is nothing so prophetic as these unpremeditated words: —

"All the political sentiments I entertain have been drawn, so far as I have been able to draw them, from the sentiments which originated in, and were given to the world from, this Hall. I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence. . . . . Now, my friends, can this country be saved upon that basis? If it can, I shall consider myself one of the happiest men in the world, if I can help to save it. If it cannot be saved upon that principle, it will be truly awful. But if this country cannot be saved without giving up that principle, I was about to say *I would rather be assassinated on this spot than surrender it.*"[1]

Then, after adding that he had not expected to say a word, he repeated the consecration of his life, exclaiming, "I have said nothing but what I am willing to live by, *and, if it be the pleasure of Almighty God, to die by.*"[2]

He was about to raise the national banner over the old Hall. But before this service, he took up the strain he loved so well, saying: "It is on such an occasion as this that we can reason together, *reaffirm our devotion to the country and the principles of the Declaration of Independence.*"[3]

[1] Raymond's Life of Lincoln, pp. 154, 155. [2] Ibid., p. 155. [3] Ibid.

Thus constantly did he bear testimony. Surely this grand fidelity will be ever counted among his chief glories. I know nothing in history more touching, especially when we consider that this devotion caused his sacrifice. "Were there as many devils in Worms as there are tiles upon the roofs, I would enter,"[1] said Luther. Our reformer was less defiant, but hardly less determined. Three times had he announced that for the great truths of the Declaration he was willing to die; three times had he offered himself on that altar; three times had he vowed himself to this martyrdom.

Slavery was already pursuing his life. An attempt was made to throw his train from the track, while a secreted hand-grenade further betrayed the diabolical purpose. Baltimore, directly on his way, was the seat of a murderous plot. Avoiding the conspirators, he came from Philadelphia to Washington unexpectedly in the night, — and thus, for the moment cheating Assassination of its victim, entered the National Capital.

From this time forward his career broadens into the history of his country and of the age. You all know it. Therefore a few glimpses will be enough, that I may exhibit its moral rather than its story.

The Inaugural Address, the formation of his Cabinet, his earliest acts, his daily conversation, all attested the spirit of moderation with which he approached his perilous position. At the same time he declared openly, that, in contemplation of universal law and of the Constitution, the Union of these States is perpetual, — that no State, upon its own mere motion, can law-

[1] "Wenn so viel Teufel zu Worms wären als Ziegel auf den Dächern, noch wollt ich hinein!" — Merle D'Aubigné, *History of the Reformation*, (Glasgow, 1846,) Vol. II. pp. 167, 168, Book VII. ch. 7.

fully get out of the Union, — that resolves and ordinances to that effect are legally void, — that acts of violence within any State are insurrectionary or revolutionary, — and that, to the extent of his ability, he should take care, according to express injunction of the Constitution, that the laws of the Union be faithfully executed in all the States. While thus positive in upholding the National Unity, he was resolved that on his part there should be no act of offence, — that there should be no bloodshed or violence, unless forced upon the country, — that it was his duty to hold, occupy, and possess the property and places belonging to the Government, — but, beyond what was necessary for this object, there should be no exercise of force, and the people everywhere should be left in that perfect security most favorable to calm thought and reflection.

But the madness of Slavery knew no bound. It was determined from the beginning that the Union should be broken, and no moderation could change this wicked purpose. A pretended power was organized, in the form of a Confederacy, with Slavery as the declared corner-stone. You know what ensued. Fort Sumter was attacked, and, after a fiery storm of shot and shell for thirty-four hours, the national flag fell. This was 13th April, 1861. War had begun.

War is always a scourge. Never can it be regarded without sadness. It is one of the mysteries of Providence, that such an evil is allowed to vex mankind. Few deprecated it more than the President. From Quaker blood and from reflection, he was essentially a man of peace. In one of his speeches during his short service in Congress, he arraigned military glory as "that rainbow that rises in showers of blood, — that

serpent's eye that charms but to destroy";[1] and when charged with the terrible responsibility of Government, he was none the less earnest for peace. He was not willing to see his beloved country torn by bloody battle, with fellow-citizens striking at each other. But after the criminal assault on Fort Sumter there was no alternative. The Republic was in peril, and every man, from President to citizen, was summoned to the defence. Nor was this all. An attempt was made to invest Slavery with national independence, and the President, who disliked both Slavery and War, described his own condition, when, addressing a member of the Society of Friends, he said, "Your people have had, and are having, very great trials. On principle and faith opposed to both war and oppression, *they can only practically oppose oppression by war.*"[2] In these few words the whole case is stated, — inasmuch as, whatever might be the pretension of State Rights, the war became necessary to overcome the baleful ambition of Slavery.

The Slave-Masters put in execution a conspiracy long contrived, for which they had prepared the way, — first, by teaching that any State might at its own will break from the Union, and, secondly, by teaching that colored persons were so far inferior as not to be embraced in the promises of the Declaration of Independence, but were justly held as slaves. The Mephistopheles of Slavery, Mr. Calhoun, inculcated for years both these pretensions. But the pretension of State Rights was a cover for Slavery.

[1] Speech on the Mexican War, January 12, 1848: Congressional Globe, 30th Cong. 1st Sess., p. 156.

[2] Letter to Mrs. Eliza P. Gurney: Raymond's Life of Lincoln, p. 617.

Therefore, in determining that the Slave-Masters should be encountered, two things were resolved: first, that this Republic is one and indivisible; and, secondly, that no hideous power, with Slavery blazoned on its front, shall be created on our soil. Here was affirmation and denial: first, *affirmation* of the National Unity; and, secondly, *denial* of any independent foothold to Rebel Slavery. Accepting the challenge at Fort Sumter, the President became the voice of the Nation, which, with stern resolve, insisted that the Rebellion should be overcome by war. The people were in earnest, and would not brook hesitation. If ever in history war was necessary, if ever in history war was holy, it was the war then and there begun for the arrest and overthrow of Rebel Slavery.

The case between the two sides is stated first in the words of Jefferson Davis, and then in the words of Abraham Lincoln.

The representative of Slavery said: —

"The time for compromise has now passed, and the South is determined to maintain her position, and make all who oppose her smell Southern powder and feel Southern steel, if coercion is persisted in. . . . . Our separation from the old Union is now complete. No compromise, no reconstruction, is now to be entertained." [1]

Abraham Lincoln said: —

"In my view of the present aspect of affairs, there need be no bloodshed or war. I am not in favor of such a course; and I may say in advance that there will be no bloodshed,

[1] Speech at Montgomery, February 16, 1861: Appleton's Annual Cyclopædia, 1861, p. 127; art. CONFEDERATE STATES.

unless it be forced upon the Government, and then it will be compelled to act in self-defence." [1]

And so issue was joined.

It was plain from the first cannon-shot, that the Rebellion was nothing but Slavery in arms; but such was the power of Slavery, even in the Free States, that months elapsed before the giant criminal was directly assailed. Generals in the field were tender towards it, as if it were a church, or a work of the fine arts. Only under the teaching of disaster was the country moved. The first step in Congress followed the defeat at Bull Run. Still the President hesitated. Disasters thickened and graves opened, until at last the country saw that by justice only could we hope for Divine favor, and the President, who leaned so closely upon the popular heart, pronounced that great word by which slaves were set free. Let it be named forever to his glory, that even tardily he grasped the thunderbolt under which the Rebellion staggered to its fall; that, following up the blow, he enlisted colored citizens as soldiers, and declared his final purpose never to retract or modify the Emancipation Proclamation, nor to return into Slavery any person free by the terms of that instrument, or by any Act of Congress, — saying, grandly, "If the people should, by whatever mode or means, make it an Executive duty to reënslave such persons, another, and not I, must be their instrument to perform it." [2]

It is sometimes said that the Proclamation was of doubtful constitutionality. If such criticism does not

[1] Speech at Philadelphia, February 21, 1861: Raymond's Life of Lincoln, p. 155. See, also, Inaugural Address, March 4, 1861: Ibid., p. 165.

[2] Annual Message, December 6, 1864: Executive Documents, H. of R., 38th Cong. 2d Sess., p. 14.

proceed from sympathy with Slavery, it evidently proceeds from prevailing superstition with regard to this idol. Future jurists will read with astonishment that such a flagrant wrong could be considered at any time as having any rights which a court was bound to respect, and especially that rebels in arms could be considered as having any title to the services of people whose allegiance was primarily due to the United States. But, turning from these conclusions, it seems obvious that Slavery, standing exclusively on local law, without support in natural law, must have fallen with the local government, both legally and constitutionally: *legally*, inasmuch as it ceased to have any valid legal support; and *constitutionally*, inasmuch as it came at once within the exclusive jurisdiction of the Constitution, where Liberty is the supreme law. The President did not act upon these principles, but, speaking with the voice of authority, said, "Let the slaves be free." What Court and Congress hesitated to declare he proclaimed, and thus enrolled himself among the world's Emancipators.

From the Proclamation of Emancipation, placing its author so far above human approach that human envy cannot reach him, I carry you for one moment to our Foreign Relations. The convulsion here was felt in the most distant places, — as at the great earthquake of Lisbon, when that capital seemed about to be submerged, there was commotion of the waters in our Northern lakes. All Europe was stirred. There, too, was the Slavery question in another form. In an unhappy moment, under an ill-considered allegation of "necessity," — which Milton tells us was the plea by which the

Fiend "excused his devilish deeds," — England accorded to Rebel Slavery the rights of belligerence on the ocean, and then proceeded to open her ports, to surrender her workshops, and to let loose her merchant ships in aid of this wickedness: forgetting all relations of alliance and amity with the United States, forgetting all logic of English history, forgetting all distinctions of right and wrong, and forgetting, also, that a New Power founded on Slavery was a moral monster, with which a just nation could have nothing to do. To appreciate the character of this concession, we must comprehend clearly the whole, vast, unprecedented crime of the Rebellion, taking its complexion from Slavery. Undoubtedly it was criminal to assail the Unity of this Republic, and thus destroy its peace and impair its example in the world; but the attempt to build a New Power on Slavery as a corner-stone, and with no other declared object of separate existence, was more than criminal, — or rather it was a crime of that untold, unspeakable guilt, which no language can depict and no judgment can be too swift to condemn. The associates in this terrible apostasy might rebuke each other in the words of an old dramatist: —

> "Thou must do, then,
> What no malevolent star will dare to look on,
> It is so wicked; for which men will curse thee
> For being the instrument, and the blest angels
> Forsake me at my need for being the author;
> For 't is a deed of night, of night, Francisco!
> In which the memory of all good actions
> We can pretend to shall be buried quick;
> Or, if we be remembered, it shall be
> To fright posterity by our example,
> That have outgone all precedents of villains
> That were before us." [1]

[1] Massinger, The Duke of Milan, Act I. Sc. 3.

Recognizing such a power, entering into *semi-alliance* with such a power, investing such a power with rights, opening ports to such a power, surrendering workshops to such a power, building ships for such a power, driving a busy commerce with such a power, — all this, or any part of this, is positive and plain complicity with the original guilt, and must be judged as we judge any other complicity with Slavery. To say that it was a *necessity* is only to repeat the perpetual plea by which slave-masters and slave-traders from the earliest moment have sought to vindicate their crime. A generous Englishman, the ornament of letters, from whom we learn in memorable lines "what constitutes a State," has denounced all complicity with Slavery in words which strike directly at this plea of necessity. "Let sugar be as dear as it may," wrote Sir William Jones to the freeholders of Middlesex, "it is better to eat none, — to eat honey, if sweetness only be palatable, — better to eat aloes or coloquintida, than violate a primary law of Nature impressed on every heart not imbruted by avarice, than rob one human creature of those eternal rights of which no law upon earth can justly deprive him."[1]

England led in concession of belligerent rights to Rebel Slavery. No event of the Rebellion compares with this, in encouragement to transcendent crime, or in prejudice to the United States. Out of English ports and English workshops Rebel Slavery drew its supplies. In English ship-yards the cruisers of Rebel Slavery were built and equipped. From English foun-

[1] Speech intended to be delivered at a Meeting of the Freeholders of Middlesex, September 9, 1780: Memoir, by Lord Teignmouth, (London, 1806,) p. 187.

dries and arsenals Rebel Slavery was armed. And all this was made easy, when her Majesty's Government, under pretence of an impossible neutrality, lifted Rebel Slavery to equality with the National Government, and gave to it *belligerent power* on the ocean. The early legend was verified. King Arthur was without sword, when suddenly one appeared, thrust out from a lake. "Lo!" said Merlin, the enchanter, "yonder is that sword I spake of: it belongeth to the Lady of the Lake, and *if she will, thou mayest take it; but if she will not, it will not be in thy power to take it.*"[1] And the Lady of the Lake yielded the sword, so says the legend, even as England yielded the sword to Rebel Slavery.

The President saw the painful consequence of this concession, and especially that it was the first step towards acknowledgment of Rebel Slavery as an Independent Power. Clearly, if it were proper for a foreign power to acknowledge Belligerence, it might, at a later stage, be proper to acknowledge Independence; and any objection vital to Independence would, if applicable, be equally vital to Belligerence. Solemn resolutions of Congress on this question were communicated to foreign powers;[2] but the unanswerable argument against any possible recognition of a New Power founded on Slavery, whether Independent or Belligerent, was stated by the President in a paper which I hold in my hand, and which has never before seen the light. It is a copy of a resolution drawn by himself, which he consigned to me, in his own autograph, for transmission to one of our valued friends abroad,[3] as

[1] The Age of Chivalry, by Thomas Bulfinch, p. 84.

[2] Drawn by Mr. Sumner. *Ante*, Vol. IX. pp. 307-312.

[3] It was sent to Mr. Bright.

an expression of opinion on the great question involved, and a guide to public duty.

"*Whereas*, while *heretofore* states and nations have tolerated Slavery, *recently*, for the first [time] in the world, an attempt has been made to construct a New Nation upon the basis of Human Slavery, and with the primary and fundamental object to maintain, enlarge, and perpetuate the same: Therefore

"*Resolved*, That no such embryo state should ever be recognized by or admitted into the family of Christian and civilized nations, and that all Christian and civilized men everywhere should by all lawful means resist to the utmost such recognition or admission."

Observe how distinctly any recognition of Rebel Slavery as an Independent Power is branded, and how "all Christian and civilized men everywhere" are summoned to "resist to the utmost such recognition"; and precisely for the same reason such "Christian and civilized men everywhere" should have resisted to the utmost any recognition of Rebel Slavery as a Belligerent Power. Had this benign spirit entered into the counsels of England when Slavery first took arms, this great historic nation would have shrunk at all hazard from that fatal concession, in itself a plain contribution to Slavery, and opening the way to infinite contributions, without which the criminal pretender must have speedily succumbed. There would have been no plea of "necessity." But Divine Providence willed it otherwise. Perhaps it was essential to the full revelation of its boundless capacities, that the Republic should stand forth alone, in sublime solitude, warring for Human Rights, and thus become an example to mankind.

Meanwhile the war continued with proverbial vicissitudes. Battles were fought and lost. Other battles were fought and won. Rebel Slavery stood face to face in deadly conflict with the Declaration of Independence, when the President, with unconscious power, dealt another blow, second only to the Proclamation of Emancipation. This was at the blood-soaked field of Gettysburg, where the armies of the Republic encountered the armies of Slavery, and, after a conflict of three days, drove them back with destructive slaughter,—as at that decisive battle of Tours, on which hung the destinies of Christianity in Western Europe, the invading Mahometans, after prolonged conflict, were driven back by Charles "the Hammer." No battle of the present war was more important. Few battles in history compare with it. A brief space later occurred another meeting on that same field. It was of grateful fellow-citizens, gathered from all parts of the Union for its consecration to the memory of those who had fallen there. Eminent men of our own country and from foreign lands united in the service. There, too, was your classic orator,[1] whose finished address was a model of literary excellence. The President spoke very briefly; but his few words will live as long as Time. Since Simonides wrote the epitaph for those who died at Thermopylæ, nothing equal has ever been breathed over the fallen dead. Thus he began: "Fourscore and seven years ago our fathers brought forth upon this continent a New Nation, *conceived in Liberty and dedicated to the proposition that all men are created equal.*" How grandly, and yet simply, is the New Nation announced, with the Equality of All Men as its frontlet! The truths of the

[1] Hon. Edward Everett.

Declaration, so often proclaimed by him, and for which he was willing to die, are inscribed on the altar of the slain, while the country is summoned to their support, that our duty may not be left undone.

"It is for us, the living, rather to be dedicated here to the *unfinished work* which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us; that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of Freedom; and that government of the people, by the people, and for the people, shall not perish from the earth." [1]

That speech, uttered at the field of Gettysburg, and now sanctified by the martyrdom of its author, is a monumental act. In the modesty of his nature, he said: "The world will little note, nor long remember, what we say here; but it can never forget what they did here." [2] He was mistaken. The world noted at once what he said, and will never cease to remember it. The battle itself was less important than the speech. Ideas are more than battles.

Among events assuring to him the general confidence against all party clamor and prejudice, this speech cannot be placed too high. To some who doubted his earnestness it was touching proof of their error. Others who followed with indifference were warmed with grateful sympathy. Many felt its exquisite genius, as well as lofty character. There were none to criticize.

His reëlection was not only a personal triumph, but

[1] Raymond's Life of Lincoln, pp. 412, 413. [2] Ibid.

a triumph of the Republic. For himself personally, it was much to find his administration ratified; but for republican ideas it was of incalculable value that at such a time the plume of the soldier had not prevailed. In the midst of war, the people at the ballot-box deliberately selected the civilian. Ye who doubt the destinies of the Republic, who fear the ambition of a military chief, or suspect the popular will, do not forget that at this moment, when the noise of battle filled the whole land, the country quietly appointed for its ruler this man of peace.

The Inaugural Address which signalized his entry for a second time upon his great duties was briefer than any in our history; but it has already gone further, and it will live longer, than any other. It was a continuation of the Gettysburg speech, with the same sublimity and gentleness. Its concluding words were like an angelic benediction.

And now there was surfeit of battle and of victory. Calmly he saw the land of Slavery enveloped by the national forces, — saw the great coil bent by his generals about it, — saw the mighty *garrote*, as it tightened against the neck of the Rebellion. Good news came from all quarters. Everywhere the army was doing its duty. One was conquering in Tennessee; another was advancing in Georgia and Carolina; another was watching at Richmond. The navy echoed back the thunders of the army. Place after place was falling, — Savannah, Charleston, Fort Fisher, Wilmington. The President left the National Capital to be near the Lieutenant-General. Then came the capture of Petersburg and Richmond, with the flight of Jefferson Davis and his

Cabinet. Without pomp or military escort, the President entered the Capital of the Rebellion, and walked its streets, from which Slavery had fled forever. Then came the surrender of Lee; that of Johnston was at hand. The military power of Rebel Slavery was broken like a Prince-Rupert's drop, and everywhere within its confines the barbarous government tumbled in crash and ruin. The country was in ecstasy. All this he beheld without elation, while his soul was brooding on thoughts of peace and clemency. On the morning of Friday, 14th April, his youthful son, who had been on the staff of the Lieutenant-General, returned to resume his interrupted studies. The father was happy in the sound of his footsteps, and felt the augury of peace. During the same day the Lieutenant-General returned. In the intimacy of his family the President said, "This day the war is over." In the evening he sought relaxation, and you know the rest. Alas! the war was not over. The minions of Slavery were dogging him with unabated animosity, and that night he became a martyr.

The country rose at once in agony of grief, and everywhere strong men wept. City, town, and village were darkened by the general obsequies. Every street was draped. Only ensigns of woe were seen. He had become, as it were, the inmate of every house, and the families of the land were in mourning. Not in the Executive mansion only, but in uncounted homes, was his vacant chair. Never before such universal sorrow. Already the voice of lamentation is returning from Europe, where candor towards him had begun even before his tragical death. A short time ago he was unknown, except in his own State. A short time ago

he visited New York as a stranger, and was shown about its streets by youthful companions. Five years later he was borne through those streets with funeral pomp such as the world never witnessed before. Space and speed were forgotten in the offering of hearts; and as the surpassing pageant, with more than "sceptred pall," moved on iron highways, over Counties and States, from ocean-side to prairie, the whole afflicted people bowed their uncovered heads.

It was hard to comprehend this blow, and many cried in despair. But the rule of God is too visible to allow doubt of His constant presence. Did not our martyr in his last address remind us that the judgments of the Lord are true and righteous altogether? And who will say that his death was not a judgment of the Lord? Perhaps it was needed to lift the country into a more perfect justice and to inspire a sublimer faith. Perhaps it was sent in love, to set a sacred, irreversible seal upon the good he had done, and to put Emancipation beyond all mortal question. Perhaps it was the sacrificial consecration of those primal truths embodied in the birthday Declaration of the Republic, which he had so often vindicated, and for which he had announced his willingness to die.

He is gone, and he has been mourned sincerely. Only private sorrow would recall the dead. He is now removed beyond earthly vicissitudes. Life and death are both past. He had been happy in life: he was not less happy in death. In death, as in life, he was still under the guardianship of that Divine Providence, which, taking him early by the hand, led him from obscurity to power and fame. The blow was sudden, but not unprepared for. Only on the Sunday preced-

ing, as he was coming from the front on board the steamer, with a beautiful quarto Shakespeare in his hands, he read aloud the well-remembered words of his favorite "Macbeth": —

> "Duncan is in his grave;
> After life's fitful fever, he sleeps well.
> Treason has done his worst; nor steel, nor poison,
> Malice domestic, foreign levy, nothing,
> Can touch him further." [1]

Impressed by their beauty, or by some presentiment unuttered, he read them aloud a second time. As the friends about listened to his reading, they little thought how in a few days what was said of the murdered Duncan would be said of him. "Nothing can touch him further." He is saved from the trials that were gathering. He had fought the good fight of Emancipation. He had borne the brunt of war with embattled hosts, and conquered. He had made the name of Republic a triumph and a joy in foreign lands. Now that the strife of blood was ended, it remained to be seen how he could confront those machinations which are only *prolongation of the war,* and more dangerous because more subtle, — where recent Rebels, with professions of Union on the lips, but still denying the birthday Declaration of the Republic, vainly seek to organize peace on *another Oligarchy of the skin.* From all these trials he was saved. But his testimony lives, and will live forever, speaking by his life, speaking yet again by his death. Invisible to mortal sight, and now above all human weakness, he is still champion, as in his early conflict, summoning his countrymen *back to the truths in the Declaration of Independence.* Dead, he speaks with more than living voice. But the author of Eman-

[1] Macbeth, Act III. Sc. 2.

cipation cannot die. His immortality on earth has begun. Country and age are already enshrined in his example, as if he were the great poet gathered to his fathers.

> "Back to the living hath he turned him,
> And all of death has passed away;
> The age that thought him dead and mourned him
> Itself now lives but in his lay." [1]

If the President were on earth, he would protest against any monotony of panegyric. He never exaggerated. He was always cautious in praise, as in censure. In endeavor to estimate his character, we shall be nearer him in proportion as we cultivate the same spirit.

In person he was tall and bony, with little resemblance to any historic portrait, unless he might seem in one respect to justify the epithet given to an early English king.[2] As he stood, his form was angular, with something of that straightness in lines so peculiar in the figure of Dante by Flaxman. His countenance had more of rugged strength than his person, and, while in repose, inclined to sadness; yet it lighted easily. Perhaps the quality that struck most at first was his constant simplicity of manner and conversation, without form or ceremony beyond that among neighbors. His handwriting had the same simplicity. It was clear as that of Washington, but less florid. Each had been surveyor, and was perhaps indebted to this experience. But the son of the Western pioneer was more simple in nature, and the man appeared in the autograph. An

[1] Uhland, The Minstrel's Return, tr. W. H. Furness: The Dial, p. 412, July, 1860.

[2] Edward the First, called the English Justinian, is also known as Longshanks.

integrity which has become a proverb belonged to the same quality. The most perfect honesty must be the most perfect simplicity. Words by which an ancient Roman was described picture him, — "*Vita innocentissimus, proposito sanctissimus.*"[1] He was naturally humane, inclined to pardon, and never remembered hard things against himself. He was always good to the poor, and in dealings with them was full of those "kind little words which are of the same blood as great and holy deeds." On the Saturday before his death I saw him shake hands with more than five thousand soldier patients in the tent-hospitals at City Point, and he told me afterwards that his arm was not tired. Such a character awakened the instinctive sympathy of the people. They saw his fellow-feeling, and felt the kinship. With him as President, the idea of Republican Institutions, where no place is too high for the humblest, was perpetually apparent; so that his simple presence was like a Proclamation of Human Equality.

While social in nature and enjoying the flow of conversation, he was often reticent. Modesty was natural to such a character. Without affectation, so was he without pretension or jealousy. No person, civil or military, complains that he appropriated to himself any honor belonging to another. To each and all he gave the credit that was due. And this same spirit appeared in smaller things. In a sally of Congressional debate, he exclaimed, that a fiery slave-master of Georgia, who had just spoken, was "an eloquent man, and a man of learning, so far as he could judge, not being learned himself."[2]

[1] Tiberius Gracchus. — VELLEIUS PATERCULUS, *Historia Romana*, Lib. II. c. 2, § 2.

[2] Congressional Globe, 30th Cong. 1st Sess., Appendix, p. 1042.

His humor, like his integrity, has become a proverb. Sometimes he insisted that he had no invention, but only memory. Good things heard he did not forget, and he was never without a familiar story. When he spoke, the recent West seemed to vie with the ancient East in apologue and fable. His ideas moved, as the beasts entered Noah's ark, in pairs. His illustrations had a homely felicity, and seemed not less important to him than the argument, which he always enforced with a certain emphasis of manner and voice. This same humor was often displayed where there was no story, and with a point that might recall Franklin. I know not how the indifference to Slavery exhibited by so many could be exposed more effectively than when he said of a political antagonist thus offending, "I suppose the institution of Slavery really looks small to him. He is so put up by nature, that a lash upon his back would hurt him, but a lash upon anybody else's back does not hurt him." And then again there is a bit of reply to Mr. Douglas, most characteristic not only for humor, but as showing how little at that time he was looking to the great place he reached so soon afterwards. "Senator Douglas," said he, "is of world-wide renown. All the anxious politicians of his party, or who have been of his party for years past, have been looking upon him as certainly, at no distant day, to be the President of the United States. They have seen in his round, jolly, fruitful face post-offices, land-offices, marshalships and cabinet appointments, chargéships and foreign missions, bursting and sprouting out in wonderful exuberance, ready to be laid hold of by their greedy hands. . . . . *On the contrary, nobody has ever expected me to be President.* In my poor, lean, lank face

nobody has ever seen that any cabbages were sprouting out. These are disadvantages, all taken together, that the Republicans labor under. We have to fight this battle upon principle, and upon principle alone."[1] Here is a glimpse of himself, as honorable as curious. In a different vein, he said, while President, "The United States Government must not undertake to run the churches."[2] Here wisdom and humor vie with each other.

He was original in mind as in character. His style was his own, having no model, but springing directly from himself. Failing often in correctness, it is sometimes unique in beauty and sentiment. There are passages which will live always. It is no exaggeration to say, that, in weight and pith, suffused in a certain poetical color, they call to mind Bacon's Essays. Theirs also was a touching reality and unconscious power, without form or apparent effort. Nothing similar can be found in state-papers. How poor are kings' speeches and Presidential messages by the side of such utterances, fit harbingers of the sublime era of Humanity!

He was placed by Providence at the head of his country during an unprecedented crisis, when the fountains of the great deep were broken up, and men turned for protection to military power. Multitudinous armies were mustered. Great navies were created. Of all these he was constitutional commander-in-chief. As the war proceeded, prerogatives enlarged and others sprang into being, until the sway of a Republican President became imperatorial, imperial. But not for one moment did the modesty of his nature desert. His constant thought was

[1] Speech in Springfield, July 17, 1858: Political Debates, p. 55.

[2] Letter to General Curtis, January 2, 1863: McPherson's Political History of the United States during the Rebellion (2d edit.), Appendix, p. 534.

his country, and how to serve it. He saw the certain greatness of the Republic, and was pleased in looking forward to that early day, when, according to assured calculation, its millions of people will count by the hundred; but this prodigious sway was commended to him only by the good of man. Personal ambition at the expense of patriotism was as far removed from the simple purity of his nature as poison from a strawberry. And thus, with equal courage in the darkest hours, he continued on, heeding as little the warnings of danger as the temptations of power. "It would not do for a President," he said, "to have guards with drawn sabres at his door, as if he fancied he were, or were trying to be, or were assuming to be, an Emperor." In the same homeliness he spoke of his morning return to daily duty as "opening shop." Though commissioning officers in multitudes beyond any other person of authentic history, he never learned the mystery of shoulder-straps or of buttons in the military and naval uniforms, except that he noticed three stars on the shoulders of the Lieutenant-General.

When he became President, he was without any considerable experience in public affairs; nor was he much versed in history, whose lessons would have been valuable. Becoming more familiar with the place, his facility increased. He had "learned the ropes," so he said. But his habits of business were irregular, and never those of despatch. He did not see at once the just proportions of things, and allowed himself to be occupied by details. Even in small affairs, as well as great, there was in him a certain resistance to be overcome. Moments occurred when this delay excited impatience, and the transcendent question seemed to suffer. But

when the blow fell, there was nothing but gratitude, and all confessed the singleness with which he sought the public good. A conviction prevailed, that, though slow to reach his conclusion, he was inflexible in maintaining it. Pompey boasted that by the stamp of his foot he could raise an army. The President did this by a word, and more: according to his own saying, he "put his foot down," and saved a principle.

This firmness in the right, as he saw it, was an anchor which held always. Emancipation, once adopted, was safe against recall or change. From time to time his determination was repeated in terms which awakened a throb in every liberty-loving bosom, — as when, in the summer before the Presidential election, in his letter "To whom it may concern," he announced "the abandonment of Slavery" as an essential condition of peace,[1] and thus again proclaimed Emancipation, — or when, on another occasion, he said, in simple words, "And the promise, being made, must be kept,"[2] — and then again exclaimed, loftily, in words good to repeat, "If the people should, by whatever mode or means, make it an Executive duty to reënslave such persons, another, and not I, must be their instrument to perform it."[3] All this was beautiful and grand. Sodom was burning, but there was no disposition to look back.

In statement of moral truth and exposure of wrong he was at times singularly cogent. There was fire as well as light in his words. Nobody more clearly exhibited Slavery in its enormity. On one occasion, he branded it as a "monstrous injustice"; on another, he

[1] July 18, 1864. McPherson's Political History of the United States during the Rebellion (2d edit.), p. 301.

[2] Letter to the Union Convention in Illinois, August 26, 1863: Ibid., p. 335.

[3] Fourth Annual Message, Dec. 6, 1864.

pictured the slave-masters as "wringing their bread from the sweat of other men's faces"; and then, on still another, he said, with fine simplicity of diction, "If Slavery is not wrong, then nothing is wrong." Would you find condemnation more complete, you must go to John Brown, or to those famous words of John Wesley, where the great Methodist held up Slavery as the "execrable sum of all villanies." Another mind, more submissive to the truth he recognized, and less disposed to take counsel of to-morrow, would have hesitated less in carrying this judgment forward to its natural conclusion. His courage to apply truth was not always equal to his clearness in seeing it. The heights he gained in conscience were not always sustained in conduct. And have we not been told that the soul can gain heights it cannot keep? Thus, while condemning Slavery, he still waited, till many feared that with him judgment would "lose the name of action." Even while exalting Human Equality, assailed and derided by one of our ablest debaters, and insisting, with admirable constancy, that all, without distinction of color, are within the birthday promises of the Republic, he yet allowed himself to be pressed by his adversary to an illogical limitation of political rights. But he was willing at all times to learn, and not ashamed to change. Before death he expressed a desire that suffrage should be accorded to colored persons in certain cases; yet here again he failed to apply the great Declaration for which he so often contended. If suffrage be accorded to colored persons only in certain cases, then, of course, it can be accorded to whites only in the same cases,—or Equality ceases.

It was his own frank confession that he had not

controlled events, but they had controlled him. At the important stages of the war, he followed rather than led. The people, under God, were masters. Let it not be forgotten that the national triumphs, and even Emancipation itself, sprang from the great heart of the American people. Individual services have been important, but there is no man who was necessary.

On one theme he inclined latterly to guide the public mind: it was the treatment of the Rebel leaders. His policy was never announced, and of course would have been subject to modification always in the light of experience. But it is known that at the moment of his assassination he was occupied by thoughts of lenity and pardon. He was never harsh, even in speaking of Jefferson Davis; and only a few days before his end, when one who was privileged to address him in that way said, "Do not allow him to escape the law, he must be hanged," the President replied calmly, in the words so beautifully adopted in his last Inaugural Address, "Judge not, that ye be not judged"; and when pressed again by the remark that the sight of Libby Prison made it impossible to pardon him, the President repeated twice over the same words. The question of clemency to our Rebels is the very theme so ably debated between Cæsar and Cato, while the Roman Senate was considering how to treat the confederates of Catiline. Cæsar consented to confiscation and imprisonment, but pleaded for life. Cato was sterner. It is probable that the President, who was a Cato in patriotism, would have followed the counsels of Cæsar.

Good-will to all men was with him a science as well as a sentiment. His nature was pacific, and throughout the terrible conflict his thoughts were always turned

on peace. He wished peace among ourselves, and he wished peace with foreign powers. While abounding in gratitude to returned officers and men, who had fought the national battle so well, he longed to see the sword in its scabbard, never again to flash against the sky. His prudence found expression in the saying, "One war at a time"; but his whole nature seemed to say, "Peace always." And yet it was his fortune to conduct one of the greatest wars in all time. "With malice toward none, with charity for all, with firmness in the right, as God gives us to see the right,"[1] — so he worked and lived; and these words of his own might be his honest epitaph.

His place in history may be seen from the transcendent events with which his name must be forever associated. The pyramids of our country are built by the people more than by any ruler; but the ruler of the people at such a moment cannot be forgotten.

It is impossible to exaggerate the Proclamation of Emancipation as an historic event. Its influence cannot be limited to the present in place or time. It will reach beyond the national jurisdiction, and beyond the present age. Besides its immediate efficacy in liberating slaves at home, it rises already a landmark of Human Progress. From the solidarity of Slavery, the fall of this abomination among us must cause its fall everywhere, — so that in Cuba, Porto Rico, Brazil, or wherever else a slave now wears a chain, that Proclamation will be felt. Proudly will it be recognized always in the destinies of the Republic. Only a short time before, the Czar of Russia, also by proclamation, raised twenty

[1] Inaugural Address, March 4, 1865.

millions of serfs to the dignity of freemen; but even this eminent act was less historic. Though of incalculable importance to the serfs, it was not the triumph of Popular Government, and it came from the East instead of the West. It is to the West that the world now looks for sunrise. "*Video solem orientem in occidente.*"[1] But the Emancipation Proclamation itself was an agency in the military overthrow of the Rebellion, which, if regarded as an achievement of war, is one of the greatest in the annals of war, but, if regarded in political consequences, is an epoch of history. Here, again, the magnitude of the event is fully appreciated only when it is considered that the triumph of the Republic is the triumph of Popular Institutions everywhere. It is much that the Republic has become impregnable, whether against "malice domestic" or "foreign levy"; but it is more that it has become an example to the world. That all this should be done under a President representing especially the people, speaking always in sympathy with the people in words of power never to be forgotten, and sealing his devotion with life, adds to the splendor of the example.

His are great heralds, such as few have had as they entered the lofty portals. Our martyred dead is seen also in the company to which he is admitted, among the purest of all time, — martyrs, patriots, philanthropists, servants of truth and duty. Milton, Hampden, Sidney, Wilberforce, all welcome the new-comer. Washington leads the hosts of his own country, from the Pilgrims of the Mayflower to the thronging crowds who have laid down their lives for the Republic.

[1] Bacon, Of the True Greatness of the Kingdom of Britain: Works, ed. Spedding, (London, 1857–59,) Vol. VII. p. 47.

By the association of a similar death he passes into the same galaxy with Cæsar, William of Orange, and Henry the Fourth of France, all of whom were assassinated, — and his star will not pale by the side of theirs. Cæsar was a contrast in everything, unless in clemency, and the coïncidence that each at the time of sacrifice was fifty-six years of age. How unlike in all else! Cæsar was of brilliant lineage, which he traced on one side to the immortal gods, and on the other to a recent chief of Rome, — of completest education, — of amplest means, — of rarest experience, — of acknowledged genius as statesman, soldier, orator, and writer, being in himself the most finished man of Antiquity; but he was the enslaver of his country, whose personal ambition took the place of patriotism, and whose name has become the synonym of imperial power. Of princely birth and great riches, William of Orange began as page in the household of Charles the Fifth, on whose wide-spread dominions, the largest of modern history, the sun never set. The youthful page became companion and intimate of the powerful Emperor. Unawed and unseduced, he upheld the liberties of his country, which he conducted wisely, surely, grandly, — anticipating the example of Washington. His name of "Silent" suggests the reticence of his American parallel, like whom he was also a liberator. Henry the Fourth, of the House of Bourbon, was a king memorable for practical sense, anecdote, and pregnant wit, with a certain Gallic salt. He, too, knew the trials of civil war, which he closed in peace and crowned with mercy. The National Unity prevailed in him. The age of fifty-six witnessed also his death, leaving great plans unfulfilled, and his career

emblazoned by the popular epic of his country, "La Henriade" of Voltaire. These are illustrious names; but there is nothing in them to eclipse the simple life of our President, whose example, commemorated by history and by song, will be the pride of humanity and a rebuke to every usurper. The cause he served was more than empire. The motive of his conduct was higher than success, — as devotion to Human Rights is higher than genius or power, as man is higher than aught else on earth.

More like him in certain aspects was the Roman Emperor Vespasian, whose just sway was prolonged in Titus, his son. Without ancestry or rank, he rose to the loftiest power, and, when on these heights, never dissembled the humility of his origin. The simplicity and frugality of early life were continued on the throne of the world. There was in the Emperor a kindred humanity, and the same fondness for story and jest. But the common feature, bringing the two into one historic family, was generous indulgence to political opponents. It belongs to the fame of our President that in selections for the public service he forgot all personal differences. Capacity and devotion to the country were controlling recommendations, before which every thought of opposition or rivalry, or even of injury, disappeared. Here the Roman Emperor anticipated the American President; for the contemporary historian, in his brief record, presents him as "very little mindful of affronts and enmities, or vindictive on their account."[1] Such a character, whether at Rome or Washington, is an example for all.

There is another character, taken away close upon

[1] Suetonius, Vespasianus, Cap. XIV.

the age of fifty-six,[1] who seems to have revived in the President. Do not be astonished, when I mention St. Louis of France. Difference of epoch and of objects occupying attention cannot obscure certain kindred features, and especially the common consecration of their lives. The French monarch, though at the head of a military power, was a lover of peace, and cultivated justice towards his neighbors. Through him a barbarous institution was overthrown, and France advanced in civilization. The Trial by Battle, against which he launched a noble ordinance, was a curse not inferior to our Slavery. In an age of violence he was gentle. In an age of privilege, and wearing a crown, he was moved to the practice of Equality. History recalls with undisguised applause the simple justice he delighted to administer, sitting under an oak in the park of Vincennes. Our President launched his ordinance at a barbarous institution, and advanced his country. He, too, practised Equality. And he, also, had his oak of Vincennes. It was that plain room where he was always so accessible as to make his example difficult for future Presidents. At stated times he was open to all who came with petitions, and they flocked across the continent. The transactions of that simple court of last resort would show how much was done to temper the law, to assuage sorrow, and to care for the widow and orphan; but its only record is in heaven.

Such, fellow-citizens, are the Life and Character of Abraham Lincoln. You have discerned his simple beginnings, — have watched his early struggles, — have

[1] Dante died at this age; also Pliny the philosopher, Pope the poet, Gibbon the historian; and at this age Charles the Fifth resigned his empire and withdrew to a monastery.

gratefully followed his dedication to the truths our fathers declared, — have hailed him twice-elected head of the Republic, through whom it was known in foreign lands, — have recognized him at a period of national peril as representative of the *unfulfilled promises* made by our fathers, even as Washington was representative of National Independence, — and you have beheld him struck down at the moment of victory, when Rebel Slavery was everywhere succumbing. Reverently we acknowledge the finger of the Almighty, and pray that our great trials may not fail, to the end that the promises of the Fathers may be fulfilled, — those promises, so great and glorious, which make the Declaration a title-deed of mankind.

Traitorous Assassination struck him down. Yet be not vindictive towards the poor atom that held the weapon. Reserve your rage for the responsible power, which, not content with assailing the life of the Republic, outraged all law, human and divine, — organized Barbarism as a principle of conduct, — took the lives of faithful Unionists at home, — prepared robbery and murder on the northern borders, — fired hotels, the home of women and children, — plotted to scatter pestilence and poison, — perpetrated piracy and ship-burning at sea, — starved American citizens in prolonged captivity, — inflicted the slow torture of Andersonville and Libby, — menaced assassination always, — and now, at last, true to itself, has assassinated our President: and this responsible power is none other than Slavery. It is Slavery that has taken the life of our beloved Chief Magistrate; and here is another triumph of its Barbarism. On Slavery let vengeance fall. Spare, if you please, the worm it employs; but do not,

I entreat you, yield amnesty to this murderous wickedness. Ravaillac, who took the life of the French Henry, was torn in pieces on the public square before the City Hall by four powerful horses, each fastened to one of his limbs, and rending in opposite directions, until, at last, after fearful struggle, nothing of the wretched assassin remained to the executioner except his bloody shirt, which was at once handed over to be burned. Such be our vengeance; and let Slavery be the victim.

And not only Slavery, which is another name for property in man, but also that other pretension, not less irrational and hateful, that Human Rights can depend on color. This is the bloody shirt of the assassin; let it be handed over to be burned.

Such a vengeance will be a kiss of reconciliation; for it will remove every obstacle to peace and harmony. The people where Slavery once ruled will bless the blow that destroyed it. The people where the kindred tyranny of Caste once prevailed will rejoice that this fell under the same blow. They will yet confess that it was dealt in no harshness, in no unkindness, in no desire to humiliate, but simply and solemnly, in the name of the Republic and of Human Nature, for their good as well as ours, — ay, for their good more than ours.

By ideas, more than by armies, we have conquered. The sword of the Archangel was less mighty than the mission he bore from the Lord. But if the ideas giving us the victory are now neglected, if the pledges of the Declaration, which the Rebellion openly assailed, are left unredeemed, then have blood and treasure been lavished for nought. Alas for the dead who

gave themselves so bravely to their country, alas for the living left to mourn the dead, if any relic of Slavery is allowed to continue! — especially if this bloody imposture, defeated in the pretension of property in man, is allowed to perpetuate an oligarchy of the skin!

How shall these ideas be saved? How shall the war waged by Abraham Lincoln be brought to an end, so as to assure peace, tranquillity, and reconciliation? All turns on the colored suffrage. This is the centre and pivot of national safety. A mistake now is worse than the loss of a battle. And yet here again we encounter the Rebellion in its odious pretensions, hardly less audacious than when it took up arms. Amidst its expiring camp-fires, the men who have trimmed them — with fresh oaths of allegiance on the lips — renew their early activity in plotting how to preserve an oligarchical power. The demon of Caste follows the demon of Slavery. In setting ourselves against this accursed succession, we follow the solemn behests of the Great Declaration, so constantly championed by the martyred President. And now, as I close this humble tribute, let me ask you to adopt that championship, which was his first title to national gratitude, and is now his best. Let each be standard-bearer of the Declaration. I cannot err, if, speaking at his funeral, I detain you to insist upon this absorbing duty, where for the moment all other duties are swallowed up.

The argument for colored suffrage is overwhelming. It springs from the necessity of the case, as well as from the Rights of Man. This suffrage is needed for the security of the colored people, for the stability of the local government, and for the strength of the

Union. Without it there is nothing but insecurity for the colored people, instability for the local government, and weakness for the Union, involving of course the national credit. Without it the Rebellion will break forth under a new *alias*, unarmed it may be, but with white votes to take possession of the local government and wield it at will, whether at home or in the national councils. If it be said that the colored people are unfit, then do I show that they are more fit than their recent masters, or than the "poor whites." They have been loyal always; and who is he, that, under any pretence, exalts the prejudices of the disloyal above the rights of the loyal? Their suffrage is now needed, — more even than you ever needed their muskets or sabres. An English statesman, after the acknowledgment of the Spanish Colonies as Independent States, boasted that he had called a new world into existence to redress the balance of the old. In similar spirit, we, too, must call a new ballot into existence to redress the tyranny that refuses justice to the colored race.

The same national authority that destroyed Slavery must see that this other pretension is not permitted to survive; nor is there any doubt that the authority which destroyed Slavery is competent to the kindred duty. Each belongs to that great policy of justice through which alone can peace become permanent and immutable. Nor may the Republic shirk this remaining service, without leaving Emancipation unfinished and the early promises of the Fathers unfulfilled. Vain the gift of Liberty, if you surrender the rights of the freedman to be judged by recent assertors of property in man. Burke, in his day, saw the flagrant inconsistency, and denounced it, saying that whatever

such people did on this subject was "arrant trifling," and, notwithstanding its plausible form, always wanted what he aptly called "the executory principle."[1] These words of warning were adopted and repeated by two later statesmen, George Canning and Henry Brougham; but they are so clear as not to need support of names. The infant must not be handed over to be suckled by the wolf; it must be carefully nursed by its parent; and since the Republic is parent of Emancipation, the Republic must nurse the immortal infant into maturity and strength. The Republic at the beginning took up this great work: the Republic must finish what it began; and it cannot err, if, in anxious care, it holds nothing done so long as anything remains undone. The Republic, with matchless energy, hurled forward victorious armies: the Republic must exact that "security for the future" without which this unparalleled war will have been waged in vain. The Republic to-day, with one consenting voice, commemorates the martyred victim: the same Republic, prompt in this service, must require that his promises to an oppressed race be maintained in all their integrity and completeness, in letter and in spirit, so that the cause for which he became a sacrifice shall not fail; his martyrdom was a new pledge, beyond any even in life.

The colored suffrage is an overwhelming necessity. In making it an essential condition of restoration, we follow, first, the law of reason and of Nature, and, secondly, the Constitution, not only in its text, but in the light of the Declaration. By reason and Nature there can be no denial of rights on account of color;

[1] Letter to Henry Dundas, April 9, 1792: Works (London, 1801–27), Vol. IX. p. 281.

and we can do nothing thus irrational and unnatural. By the Constitution it is stipulated that "the United States shall guaranty to every State *a republican form of government*"; but the meaning of this guaranty must be found in the birthday Declaration of the Republic, which is the controlling preamble of the Constitution. Beyond all question, the United States, when called to enforce the guaranty, must insist on *the equality of all before the law,* and *the consent of the governed.* Such is the true idea of republican government according to American institutions.

The Slave-Masters, driven from their first intrenchments, occupy inner defences. Property in man is abandoned; but they now insist that the freedman shall not enjoy political rights. Liberty has been won. The battle for Equality is still pending. And now a new compromise is proposed, in the name of State Rights. Sad that it should be so. But I do not despair. The victory may be delayed, but not lost. All who set themselves against Equality will be overborne; for it is the cause of Humanity. Not the rich and proud, but the poor and lowly, will be the favorites of an enfranchised Republic. The words of the Prophet must be fulfilled: "And I will punish the world for their evil, and the wicked for their iniquity; and I will cause the arrogancy of the proud to cease, and will lay low the haughtiness of the terrible. I WILL MAKE A MAN MORE PRECIOUS THAN FINE GOLD, EVEN A MAN, THAN THE GOLDEN WEDGE OF OPHIR."[1] I accept these sublime promises, and echo them back as assurance of triumph. Then will the Republic be all that heart can

[1] Isaiah, xiii. 11, 12.

desire or imagination paint, — "*supremely lovely and serenely great, majestic mother*" of a free, happy, and united people, with Slavery and all its tyranny beaten down under foot, so that no man shall call another master, and all shall be equal before the law.

In this great victory death is swallowed up, and before us is the vision of the Republic performing all that was promised. How easy, then, the passage from sorrow to exultation!

Fellow-citizens, be happy in what you have. Mourn not the dead, but rejoice in his life and example. Rejoice, as you point to this child of the people, who was lifted so high that Republican Institutions became manifest in him. Rejoice that through him Emancipation was proclaimed. Rejoice that under him "government of the people, by the people, and for the people" obtained a final verdict never to be set aside or questioned. Above all, see to it that his constant vows are performed, and the promises of the Fathers maintained, so that no person in the upright form of man is shut out from their protection. Do this, and the Unity of the Republic will be fixed on a foundation that cannot fail. The corner-stone of National Independence is already in its place, and on it is inscribed the name of GEORGE WASHINGTON. Another stone must also have place at the corner. It is the great Declaration itself, once a promise, at last a reality. On this adamantine block we will gratefully inscribe the name of ABRAHAM LINCOLN.

IDEAS OF THE DECLARATION OF INDEPENDENCE.

Letter to the Mayor of Boston, on the Celebration of National Independence, July 4, 1865.

Boston, July 4, 1865.

MY DEAR SIR, — It will not be in my power to unite with my fellow-citizens of Boston in celebrating the anniversary of our National Independence; but I rejoice that we can celebrate it so happily, with Victory as the master of ceremonies.

Do not, I pray you, Mr. Mayor, let the great day pass without reminding our fellow-citizens that victory on the field of battle is not enough. There must be the further victory found in the recognition, everywhere throughout the country, of the ideas of the Declaration of Independence.

It must be confessed, that, according to these ideas, republican government can be founded only on "the consent of the governed" and the equality of all before the law. And why not dedicate ourselves to the work of establishing these ideas?

Then will our fathers be vindicated, and our country be glorified. God save the Republic!

Accept my thanks for the invitation with which you have honored me,

And believe me, dear Sir, faithfully yours,

Charles Sumner.

CONSENT OF THE GOVERNED NECESSARY IN THE NEW GOVERNMENTS.

ADVICE TO COLORED CITIZENS.

LETTER TO A COMMITTEE OF COLORED CITIZENS AT SAVANNAH, JULY 8, 1865.

SAVANNAH, June 15, 1865.

HON. CHARLES SUMNER: —

SIR, — We, the undersigned, Committee of the Union League of Savannah, Ga., have the honor to present to you these our petitions to his Excellency Andrew Johnson, President of the United States, signed personally by the hands of some three hundred and fifty loyal citizens. We respectfully ask that you will present them to his Excellency the President, and we beg that your Honor will use all of your influence in our behalf, and oblige,

Very respectfully, your humble servants,

JOS. C. JACKSON, *Chairman*,
GEORGE R. J. DOLLY, *Cor. Sec.*,
BENJ. W. ROBERTS,
PETER DUNCAN,
JOSEPH S. TISON.

BOSTON, 8th July, 1865.

GENTLEMEN, — Your petition asking for the right to vote has been forwarded to me here, with the request that I would present it to the President. I regret much that my absence from Washington has prevented me from doing this in person; but I have lost no time in forwarding the petition to the President, with my most earnest recommendation.

You need not beg me to use influence in your behalf. I cannot help doing so to the extent of my ability.

Allow me to add, that you must not be impatient. You have borne the heavier burdens of Slavery; and as these are now removed, believe the others surely will be also. This enfranchised Republic, setting an example to mankind, cannot continue to sanction an odious Oligarchy, whose single distinctive element is color. I have no doubt that you will be admitted to the privileges of citizens.

It is impossible to suppose that Congress will sanction governments in the Rebel States which are not founded on "the consent of the governed." This is the corner-stone of republican institutions. Of course, by the "governed" is meant all the loyal citizens, without distinction of color. Anything else is mockery.

Never neglect your work; but meanwhile prepare yourselves for the privileges of citizens. They are yours of right, and I do not doubt that they will be yours soon in reality. The prejudice of caste and a false interpretation of the Constitution cannot prevail against justice and common sense, both of which are on your side; and I may add the Constitution also, which, when properly interpreted, is clearly on your side.

Accept my best wishes, and believe me, fellow-citizens,

Faithfully yours,

CHARLES SUMNER.

MESSRS. JOSEPH C. JACKSON, GEORGE R. J. DOLLY, PETER DUNCAN, BENJAMIN W. ROBERTS, JOSEPH S. TISON.

JUSTICE TO THE COLORED RACE.

Letter to a Trustee for Colored Schools in the District of Columbia, August 16, 1865.

In reply to a representation that there was a little scheme in Washington to deprive the colored schools of their proportion of the school funds arising from taxation, Mr. Sumner wrote the following letter, which was published in Washington.

Boston, August 16, 1865.

DEAR SIR, — I had already noticed the article on the Washington "Ostrich" before I received the paper you kindly sent me.

The Lord reigns, and I am sure the diabolism at Washington cannot continue to prevail. You will not weary in counteracting it.

Work on. Fight on. When Congress meets, we shall insist upon JUSTICE. This is the talisman by which our country is to be saved.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

THE LATE GEORGE LIVERMORE, ESQ.

Article in the Boston Daily Advertiser, September 2, 1865.

IN the death of Mr. Livermore we have all lost a friend. He was naturally and essentially kind. He was also most conscientious and sincere. He was exquisite in simplicity. He was pure in heart. Though retiring and modest, he was outspoken and courageous for the Right. His instinctive earnestness was always on the side of virtue. These qualities marked him in all the walks of life. To these must be added a general intelligence, much acquired information, business talents of no common order, and an immense love of books.

He was a merchant always, and his name will hereafter be inscribed proudly among those who have done honor to the commercial life of Boston. Men are remembered most by what they do outside their profession. Although not unsuccessful in business, Mr. Livermore will be commemorated as a merchant who excelled in refined tastes, in generous sympathies, and in literary studies. He was an example of what a merchant may be, not only at his counting-house, but at home, in association with men, in the Sunday school, in counsel to the young, and especially in his library.

Among his schoolmates was one whose reputation in the medical profession is enhanced by acknowledged

fame as writer and as poet, who cheered him during his late illness.[1] I had not the advantage of acquaintance with Mr. Livermore at that early day. I knew him first as he was about to visit Europe, and I cannot forget his absorbing interest at that time in the family of William Roscoe. He admired the accomplished author of the history of Lorenzo de' Medici and of Leo the Tenth, because he was a merchant who cultivated letters, and while in England one of his peculiar pleasures was to study on the spot the life and character of this merchant author. His interest in bibliography was recognized by Dibdin, the great professor of the science, who conceived a friendship for his American disciple.

On his return, our merchant, while engaged in all the activities of business, renewed his devotion to those other pursuits which made him so dear to a large and growing circle. His library increased. His specialty was Bibles, of which he formed a precious collection. Among these is one which once belonged to Melancthon, with notes in the autograph of this mild and scholarly Reformer. There is also a very rare copy of "The Soldier's Pocket Bible," in antique print and spelling, as published for the God-fearing Ironsides of Oliver Cromwell. In other departments the library is rich and interesting. Mr. Livermore read his books, but he had a true pleasure in looking at them. He was choice in editions, and careful in bindings. Anything in vellum or large paper had a fascination for him, showing that he had not conversed with Dibdin in vain. This library, after overflowing the rooms of his house, was gathered into a beautiful apartment,

[1] Oliver Wendell Holmes.

built expressly for it. There, at the close of the day, after the cares of business were over, he found a pleasant retreat, interrupted only by the welcome visit of friends. His moderate desires were amply gratified, and he was happy. The library of Prospero was not more to him, when he "prized it above his dukedom."

As a member of learned societies and of charitable associations, Mr. Livermore was indefatigable. Perhaps nobody in our community was more felt in these quiet and unobtrusive labors. His interest in public affairs was constant also, and this became intense as the great issue presented by the Rebellion loomed into sight. He busied himself to raise troops. More important still, at a critical moment, before the Government had determined to enlist colored soldiers, he prepared and printed at his own expense a most instructive elucidation of this question, founded on our Revolutionary history, which he entitled "An Historical Research respecting the Opinions of the Founders of the Republic on Negroes, as Slaves, as Citizens, and as Soldiers." This was read to the Massachusetts Historical Society, 14th August, 1862, two months before the first Proclamation of Emancipation, and nine months before the famous Fifty-fourth Regiment, of Massachusetts, commanded by Colonel Shaw, sailed from Boston. Among the agencies which swayed the public mind at that time, this work is conspicuous, and it is within my own knowledge that it much interested President Lincoln. While preparing the final Proclamation of Emancipation, the President expressed a desire to consult it, and, as his own copy was mislaid, he requested me to send him mine, which I did. But while performing

this patriotic service, our merchant did not forget his bibliographical tastes. The many editions were all remarkable for faultless paper and type, and one of them, now before me, is on large paper.

At the time of his death Mr. Livermore was fifty-six years of age, which was also the age of President Lincoln, for whom he entertained unbounded regard, deepening into affectionate reverence. By the bedside, in his last illness, hung a copy of the immortal Proclamation, signed by its author in his own autograph. There also within reach were good books, which he enjoyed as long as he could enjoy anything, and even after he began to lose hold of life.

The death of such a man must make many sad. To family, friends, and neighbors it will be irreparable. To the whole community it is a calamity. There is more than one mourner who will repeat, from the bottom of his heart, the words of the great poet: —

> "Farewell, too little and too lately known,
> Whom I began to think and call my own!"[1]

[1] Dryden, To the Memory of Mr. Oldham.

THE NATIONAL SECURITY AND THE NATIONAL FAITH:

GUARANTIES FOR THE NATIONAL FREEDMAN AND THE NATIONAL CREDITOR.

Speech at the Republican State Convention, in Worcester, Massachusetts, September 14, 1865. With Appendix.

Nor was civil society established merely for the sake of living, but rather for the sake of living well. — Aristotle, *Politics*, tr. Taylor, Book III. Ch. 9.

This, Sir, is a cause that would be dishonored and betrayed, if I contented myself with appealing only to the understanding. It is too cold, and its processes are too slow for the occasion. I desire to thank God, that, since He has given me an intellect so fallible, He has impressed upon me an instinct that is sure. On a question of shame and honor reasoning is sometimes useless, and worse. I feel the decision in my pulse: if it throws no light upon the brain, it kindles a fire at the heart. — Fisher Ames, *Speech in Congress on the Treaty with Great Britain, April* 28, 1796: Works, Vol. II. p. 56.

A spider in his natural size is only a spider, ugly and loathsome, and his flimsy net is only fit for catching flies. But, good God! suppose a spider as large as an ox, and that he spread cables about us; all the wilds of Africa would not produce anything so dreadful. — Edmund Burke, *Speech on the Petition of the Unitarians, May* 11, 1792: Works (London, 1801–27), Vol. X. p. 53.

The Convention was organized with the following officers.

President, Hon. Charles Sumner, Boston.

Vice-Presidents, Hon. F. W. Lincoln, Jr., Boston ; Gen. B. F. Butler, Lowell. At large, Caleb Swan, Easton ; E. F. Stone, Newburyport ; R. L. Pease, Edgartown ; W. P. Phillips, Salem ; Eliphalet Trask, Springfield ; Tully Crosby, Brewster ; W. B. Spooner, Boston ; Alvah Crocker, Fitchburg ; Rev. L. A. Grimes, Boston ; G. L. Davis, North Andover ; E. L. Pierce, Milton ; S. E. Sewall, Melrose ; C. O. Rogers, Boston ; W. S. Clark, Amherst. District 1, F. Hooper, Fall River ; E. L. Barney, New Bedford. 2, F. M. Johnson, Quincy ; G. B. Weston, Duxbury. 3, Ginery Twichell, Brookline ; A. J. Wright, Boston. 4, Charles Beck, Cambridge ; E. C. Fitz, Chelsea. 5, B. H. Smith, Gloucester ; William Howland, Lynn. 6, O. R. Clark, Winchester ; Milton Bonney, Lawrence. 7, C. R. Train, Framingham ; John Nesmith, Lowell. 8, A. M. Bigelow, Grafton ; Caleb Thayer, Blackstone. 9, Henry Smith, Templeton ; Joseph Hartwell, Ware. 10, Joseph Tucker, Great Barrington ; G. M. Fisk, Palmer.

Secretaries, C. W. Slack, Boston ; S. N. Stockwell, Boston ; Thomas White, Randolph ; G. F. Stetson, Hanson ; H. S. Gere, Northampton ; G. S. Sullivan, Boston ; Samuel Chism, Newton ; James Pierce, Malden.

Hon. Tappan Wentworth, of Lowell, and Hon. William Brigham, of Boston, were appointed to conduct Mr. Sumner to the chair. Enthusiastic applause greeted his appearance on the platform. He then made the speech which follows.

The report of the Boston *Daily Advertiser* says : "Mr. Sumner's Address, which we give on our second page, was heard with the most profound attention, and was at many points greeted with the most enthusiastic expressions of approval. The argument for the exclusion of Rebels from political power was especially applauded, and there could be no doubt of the sentiments of the Republican party of Massachusetts on this question. When Mr. Sumner concluded, the manifestations of applause were vehemently renewed."

After the speech, Hon. Amasa Walker offered resolutions in tribute to Richard Cobden, recently deceased, in whom "our country has lost

one of its most earnest and devoted friends, and England one of her ablest statesmen," and tendering to his family sincere and heartfelt sympathy in their bereavement, which were adopted unanimously, and afterwards communicated by Mr. Sumner to Mrs. Cobden.

A letter was read from Governor Andrew, declaring his purpose to retire from office at the close of the present year, when Hon. Alexander H. Bullock, of Worcester, was unanimously nominated as the candidate for Governor. Hon. William Claflin, of Newton, was unanimously nominated as candidate for Lieutenant-Governor.

On the adjournment for dinner Mr. Sumner left for Boston, and in the afternoon the chair was taken by Gen. Butler, who addressed the Convention, declaring himself in favor of Equality of Rights and justice for all. "We hope," said he, "that hereafter the great Massachusetts idea — that every man has a right to be the equal of every other man — shall become a vital essence of government upon this continent forever." [*Applause.*]

Mr. Bullock, the nominee for Governor, followed in a brief address, in which he said : —

"Mr. President, — You cannot wish that I should enter upon the discussion of national topics, overwhelming as they are, at this hour. The distinguished Senator, who has so long and so well represented the people of the State, — how long and how well you all know [*applause*], — and the other gentleman who has preceded me this afternoon, and who has served with equal ability in the civil and military departments of the Government [*applause*], have rendered any words of mine superfluous. Only let me say that I choose to abide by the Massachusetts doctrines, and that I trust that some familiarity has taught me what they are."

Hon. William Claflin, the nominee for Lieutenant-Governor, spoke in the same strain.

The Resolutions, which were unanimously adopted, declared, —

"And we call upon Congress, before whom must speedily come the whole question of reorganizing the Southern communities, to see to it that the loyal people, white and black, shall have the most perfect guaranties for safety, before any final steps are taken toward the readmission of the revolted people of the South to their forfeited rights."

The Convention adjourned after a day of utmost harmony.

SPEECH.

FELLOW-CITIZENS, — Called to preside over this Annual Convention, where are brought together the intelligence, the heart, and the conscience of Massachusetts, (God bless her!) I begin by asking you to accept my thanks. Gladly would I leave this post of honor to another; but I obey your will. In all I have to say I must speak frankly. What has with me become a habit is at this moment more than ever a duty. Who can see peril to his country, and not cry out? Who can see that good ship which carries the Republic and its fortunes driving directly upon a lee-shore, and not shout to the pilot, "Mind your helm"? Apologies or roundabout phrases are out of place, whenever danger threatens.

When last I addressed my fellow-citizens, at the close of the late Presidential canvass, as we were about to vote for Abraham Lincoln and Andrew Johnson, I undertook to show the absolute identity between Slavery and the Rebellion, so that one could not end without the other. Finished that address, I said to friends near me, "This is my last Antislavery speech." I so thought at the time; for I anticipated the speedy downfall of the Rebellion, carrying with it Slavery. I was

mistaken. Neither the Rebellion nor Slavery is yet ended. The Rebellion has been disarmed; but that is all. Slavery has been abolished in name; but that is all. As there is still a *quasi* Rebellion, so is there still a *quasi* Slavery. The work of liberation is not yet completed. Nor can it be, until the Equal Rights of every person once claimed as a slave are placed under the safeguard of irreversible guaranties. It is not enough to prostrate the master; you must also lift up the slave. It is not enough to declare Emancipation; the whole Black Code, which is the supplement of Slavery, must give place to that Equality before the Law which is the very essence of Liberty. It is an old principle of the Common Law, recognized by all our courts, as announced by Lord Coke, that, "where the law granteth anything to any one, that also is granted without which the thing itself cannot be." So, also, where a piece of land is conveyed which is enclosed by the possessions of the grantor, *a right of way* is implied from common justice and the necessity of the case. And then again, where the reason of a law ceases, the law itself ceases. So, also, where the principal falls to the ground, the incident falls also. But all these unquestionable principles are fatal to the Black Code. The Liberty that has been granted "cannot be," if the Black Code exists. The piece of land conveyed is useless without that right of way which is stopped up by the Black Code. The reason for the Black Code is Slavery; and with the cessation of the reason, the whole Black Code itself must cease also. The Black Code is the incident of Slavery, and as such it must fall with the principal. Unless this is accomplished, you will keep the word of promise to the ear and break it

to the sense; you will imitate those cruel quibbles, of which history makes mention, where, by subtle equivocations, faith has been violated; you will do little better than the Turk, who stipulated with a certain person that his head should be safe, and straightway proceeded to cut him in two at the middle, — or than those false Greeks, who, after promising to restore their captives, kept their promise by restoring them dead.

Slavery begins by denying the right of a man to himself; and the Black Code continues this denial by its cruel exclusions. Every freedman must be secured in this right by admission to the full panoply of citizenship.

Slavery sets at nought the relation of husband and wife. Every freedman must be able to claim his wife as his own.

Slavery sets at nought the parental relation. Every freedman must be able to call his child his own.

Slavery shuts the gates of knowledge. Every freedman must be assured in all the privileges of education.

Slavery takes from its victim the hard-earned fruits of his toil. Every freedman must be protected in his industry.

Slavery denies justice to the colored man by cruelly rejecting his testimony. Every freedman must enter the courts freely, as witness or as party.

Until all this is done, in every particular, and beyond possibility of question, it is vain to say that Emancipation has been accomplished. The good work is only half done. It must be continued to assured consummation, under the powerful auspices of the Nation. The same national authority which began it must take care that it is maintained and completed, in letter and in

spirit, everywhere throughout the Rebel States, — in conventions of the people, in legislative assemblies, in courts, in the city, in the country, in streets, on highways, on by-ways, in retired places, on plantations, in houses, — so that no man shall be despoiled of any of his rights, but all shall be equal before the law.

There is a glorious instance in our own day, which is an example for us, when the Emperor of Russia, by proclamation, fulfilling the aspirations of his predecessors, set free twenty-three millions of serfs, and then completed his work by *supplementary provisions* investing the freedmen with civil and political rights, including the right to testify in court, the right of suffrage, and the right to hold office. I have in my hand this immortal Proclamation, dated at St. Petersburg, 19th February, 1861, — promulgated amidst prayers and thanksgivings in all the churches of the national capital, and at once expedited to every part of the widely extended empire by the hands of generals and staff-officers of the Emperor himself. Here it is, in an official document entitled "Affranchissement des Serfs," and issued at St. Petersburg. After reciting that earlier measures in behalf of the serfs had failed, because they had been left to "the spontaneous initiative of the proprietors," the Emperor proceeds to take the work in hand as a sacred legacy from his ancestors, and declares the serfs, after an interval of two years, "entirely enfranchised." Meanwhile, that nothing might fail, "a special court" for serfs was created in each province, charged with the organization of local governments, the adjustment of boundaries, and generally to superintend the transition from the Old to the New, with "justices

of the peace" in each district to examine on the spot all questions arising from Emancipation. Had the work stopped here, it would have been incomplete, it would have been only half done; but no such fatal mistake was made.[1]

Accompanying the Proclamation are supplementary provisions, called "Regulations," prepared with care, and divided into chapters and sections, — occupying no less than ninety-one pages in double columns and small type, — by which the rights of the freedmen are secured beyond question. Beginning with the declaration that the freedmen "acquire the rights belonging to the condition of free farmers," they then proceed in formal words to fix and assure these rights, civil and political. By one section it is provided that "the articles of the Civil Code on the rights and obligations of the family are extended to the freedmen; that consequently they acquire the right, without authorization of the proprietor, to contract marriage, and to make any arrangement whatever concerning their family affairs; that they can equally enter into all agreements and obligations authorized by the laws, as well with the State as with individuals, on the conditions established for free farmers; that they can inscribe themselves in the guilds, and exercise their trades in the villages; and they can found and conduct factories and establishments of commerce." Another section secures to the freedmen the right of acquiring and alienating property of all kinds, according to the general law, and, besides,

[1] At this stage of his speech Mr. Sumner called attention to M. Kapnist, a Russian gentleman belonging to the Chancery of the Emperor, who was on the platform. The allusion was received by the Convention with applause, which M. Kapnist acknowledged by rising and bowing.

guaranties, on certain conditions, "the possession of their homesteads," with the grounds appurtenant. An additional section secures them complete *Equality in the courts*, with "the right of action, whether civilly or criminally, to commence process, and to answer personally or by attorney, to make complaint, and to defend their rights by all the means known to the law, *and to appear as witnesses and as bail, conformably to the common law.*" Other sections secure to the freedmen *Equality in political rights*, by providing, that, "on the organization of the towns, they shall be entitled to take part in the meetings and elections for the towns, and to vote on town affairs, and to exercise divers functions"; that they shall also "take part in the assemblies for the district, and shall vote on district affairs, and choose the chairman," and generally enjoy all rights to elect local officers and to be elected in turn. And still another section authorizes the freedmen "to place their children in the establishments for public education, to embrace the career of instruction, or the scientific career, or to take service in the corps of surveyors." And it is further provided, that they "cannot lose their rights, or be restrained in their exercise, except after judgment of the town, according to fixed rules"; and still further, that they "cannot be subjected to any punishment, otherwise than by virtue of a judgment, or according to the legal decision of the town to which they belong." Such are the safeguards by which Emancipation in Russia is completed and assured. Such is the lesson of the great Empire to the great Republic.

In asking that we shall do likewise, I follow the plain suggestions of reason, whether we regard the

interest of the freedmen or our own. For justice to the freedmen is now intimately linked with the national security. Be just, and the Republic will be strong. Be just, and you will erect a barrier against returning Rebellion. Here Massachusetts has a duty to perform. Now, as in times past, her place is in the front. You will not, I trust, be disturbed by criticism, even if it become invective. Throughout the long conflict with Slavery, and the earlier conflict with the mother country, Massachusetts has been accustomed to hard words; and even at a more ancient day, as far back in colonial history as 1691, we find an ill-tempered critic, with a strange jumble of metaphors, crying out against our fathers: "All the frame of heaven moves upon one axis; and the whole of New England interests seem designed to be loaden on one bottom, and her particular motions to be concentric to the Massachusetts tropic. You know who are wont to trot after the Bay horse."[1] If others trot after the Bay horse, it is simply because Massachusetts means always to keep on the right road, and by unerring instinct knows the way. Error proceeds oftener from ignorance than from malice. Obviously, at this moment, the great difficulty is that people do not see clearly what ought to be done.

Fellow-citizens, as peace seems about to smile on our country, convulsed by most cruel and costly war, there is one simple duty on which all can unite, when it is understood. It is the duty expressed in at least one part of the familiar saying, "Indemnity for the past

[1] Rev. Ichabod Wiswall to Gov. Thomas Hinckley, of Plymouth, November 5, 1691: Hutchinson's History of Massachusetts, Vol. I. p. 413; Hinckley Papers, Coll. Mass. Hist. Soc., 4th Ser. Vol. V. p. 301.

and *security for the future*." Indemnity, alas! we can never have. Who can repay the millions of lost treasure? Who can repair the shattered and mutilated forms returned from the terrible battle with Slavery? Who can recall the dead? Indemnity we renounce. There are no scales on earth in which it can be weighed. There are no possible accumulations of wealth that would not be exhausted before its first instalment was counted out. But no such difficulty can occur in adjusting security for the future. And the very vastness of our sacrifice is an irresistible reason why this should be fixed beyond question, so that the appalling judgment shall not visit us again. Indemnity we renounce; *but security we will have*. This is the one thing needful. This is the charity embracing all other charities. This is the pivot of the national Hereafter. This is at once corner-stone and key-stone of that reconstructed Union to which we look for tranquil peace and reconciliation. There are none so high, and there are none so low, as not to be concerned in obtaining this security; for without it all that we hold most dear will be in jeopardy. Without security, agriculture and commerce must languish and die; without security, the whole country must be impoverished in resources, while the rich become poor and the poor become poorer; without security, rights of property and rights of person will lose their value; and without security, the Union, justice, domestic tranquillity, the common defence, the general welfare, and the blessings of Liberty, for which the Constitution was ordained and established, must all fail. What is government, or country, or home, or life itself, without security?

Acts of Congress, ratified by the popular will, and fixed beyond recall by the actual enjoyment of those precious fruits for which the debt was incurred. Repudiation of our bonds, whether to the national creditor or to the national freedman, would be a shame and a crime; and the national faith is irrevocably plighted to the two alike. Here is the Proclamation, and here is a Treasury Note. [*Here Mr. Sumner held up an official copy of the Proclamation, and also a Treasury Note.*] Look at the signature, and look at the terms. The former is signed by the President himself, Abraham Lincoln; the latter is signed by an unknown clerk, whose name I cannot decipher. The former is stronger and more positive in terms than the latter. The Treasury Note simply says: "It is hereby certified that the United States are indebted unto —— or bearer in the sum of $100, redeemable" after a certain date, and that "this debt is authorized by Act of Congress." The binding terms of the Proclamation, which I have read, are solemnly enforced by that memorable invocation at the close: "And upon this act, sincerely believed to be an act of justice warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God." Thus religion comes to confirm the pledge with sanctions of its own. That pledge is as enduring as the Republic.

Such are the supreme objects now at heart: the National Security and the National Faith, or the two absorbed into one, — *Security for the Future.*

And here allow me to present an illustration, which, unless I mistake, will make our duty clear. You all remember the immense and costly dikes built by Hol-

land against the sea; but perhaps you may not recall their origin and importance. Before these embankments the whole country was in constant danger. At an early period an irruption swallowed up no less than forty-four villages, followed very soon by another, which destroyed eighty thousand lives. In the fifteenth century still another swept away one hundred thousand persons, — a terrible sacrifice, even greater in proportion to the population of Holland at that time than we have been called to bear from the bloody irruption of Slavery. At last dikes were constructed as safeguards, and down to this day they are preserved at large annual cost. Precautions of all kinds are superadded. A special corps of engineers, educated at Delft, is constantly employed in the work of renovation. Watchmen patrol the walls, and alarm-bells are ready to ring. The gratitude of the people is manifest even to unconscious protectors; and the stork, resting here on his flight from Africa, is held in veneration for his precious service in destroying the vermin that weaken and sap the dikes; so that to kill a stork is little less than crime. Such are defences by which Holland is guarded against dangers from the sea. But how petty is her peril, compared with ours! We, too, must have our dikes, with engineers to keep them strong, with watchmen to patrol, with alarm-bells to ring; and we, too, must have our storks to destroy the vermin that weaken and sap our embankments.

What shall be our defences? How shall we guard against destructive irruptions? And where shall we establish our security for the future? Our embankments cannot be of earth. Walls of stone will not do. Towers, ramparts, and buttresses are impotent against our vindictive tide. The security we seek

must be found in *irreversible guaranties, coëxtensive with the danger.*

It becomes us, then, to consider carefully the elements of danger, — bearing in mind always that a danger clearly foreseen will not happen, unless prudence has ceased to prevail. These may be considered in general and in detail. They may be considered in certain general influences, applicable to all our relations with the Rebellion, or in certain specific points, obviously requiring specific guaranties.

If we look at the Rebel States generally, there is little to inspire trust. They rose against a paternal government simply for the sake of Slavery, planting themselves upon two postulates furnished by John C. Calhoun, — first, State Rights, and, secondly, the alleged falsehood of our fathers, when, at the birth of our nation, they declared that all men are born equal. Since that early war when Satan "in proud rebellious arms drew after him the third part of heaven's sons," nothing so utterly wicked has occurred. And the spirit of Satan entered into the Rebellion, and continued with it to the end. It was present on the battle-field; it was present in the treatment of Union prisoners; it was present in the piracies of the ocean. I know not that these devils have yet been cast out. I know not that any swine into which they entered have rushed headlong into the sea. But I do know, that, according to concurring and unimpeachable testimony from all quarters of the Rebel States, from North Carolina to Texas, there is one sullen, defiant voice, which, in the very words of Satan, when driven from the skies, thus speaks: —

"What though the field be lost?
All is not lost: the unconquerable will,
And study of revenge, immortal hate,
And courage never to submit or yield.

. . . . .

Since, through experience of this great event,
In arms not worse, in foresight much advanced,
We may with more successful hope resolve
To wage by force *or guile* eternal war,
Irreconcilable to our grand foe."

Such is their spirit. Grounding arms, they now resort to other means. Cunning takes the place of war. As they precipitated themselves out of the Union, they now seek to precipitate themselves back. A "wooden horse" is constructed, which is stuffed with hidden foes, and thus they seek to enter Troy. Already the rattle of arms is heard, and ominous voices, as the treacherous engine is advanced; but, beyond these sounds, there is the record of the past and the present. Who does not know that the South is full of spirits who have sworn undying hatred, not only to the Union, but to reason itself, and whose policy is a perpetual conspiracy against the principles of our Government? Painful proofs come to demonstrate the prevailing frenzy. The freedmen are trodden down, and the land is filled with tragedies. History stands aghast at the Massacre of Glencoe in a retired Scotch valley, and our sympathies overflow at the murder of a solitary traveller by the merciless Indian; but these scenes are now repeated. The barbarism of Slavery rages still. The lash and the bloodhound are at large. Life is of little value, if it beats under a colored skin. Citizens in the national uniform are insulted, mutilated, murdered, — especially if in command of colored troops. And these criminals, besmeared with patriot blood, and

boiling with concentrated rage, now strive to envelop themselves in the immunities of State Independence, with two special objects: first, that they may deal with the freedman as they please, without check from the national authority; and, secondly, that they may send a solid representation of more than eighty votes, pledged to Southern pretensions, which, in combination with treacherous votes from the North, may reassert that ancient monopoly and masterdom under which the country suffered so long, —

> "and once more
> Erect the standard there of ancient Night."

Reading the proceedings of the Convention in Mississippi, we seem again to hear the ancient voice, —

> "To claim our just inheritance of old,
> Whether by open war or *covert guile*,
> We now debate."

One of their orators said plainly, that "he was opposed to fighting the General Government, or anybody else, — *that he was ready to submit to its wishes, as he would to a highway robber whose power he was not able to resist.*" Another, less frank, thought it policy to accept the present condition of affairs, until the control of the State is restored into the hands of its people, and "to submit *for a time* to evils which cannot be remedied." And still another, much more wily, when urging seeming acceptance of the Union, thus lured his brother conspirators: "*If we act wisely, we shall be joined by what is called the Copperhead party,* and even by many of the Black Republicans." Such is the plot, and such the disastrous alliance foreshadowed. But, thank God, in encouraging his comrades, the conspirator has warned us. Forewarned, forearmed.

From all quarters comes the warning, "Trust not their presents, nor admit the horse!" The voice of the Grecian Sinon was not more treacherous. The testimony is concurring. Military officers returning from the South, public functionaries, intelligent travellers, loyal residents, each and all speak with one voice. By conversation and by letter I have gathered the proofs, which are complete. Persons who have had peculiar opportunities unite in report that the rebel spirit still prevails, that the treatment of the freedmen is beastly, and that the national debt is denounced. Two eminent gentlemen, whose official positions have made them familiar with public opinion in two different States, have expressed to me the conviction that there is not a single ex-Rebel who would vote to pay the interest on the national debt. A trustworthy traveller, who has just visited Louisiana, Mississippi, and Alabama, with which he was already familiar, writes me: "The former masters exhibit a most cruel, remorseless, and vindictive spirit towards the colored people. In parts where there are no Union soldiers, I saw colored women treated in the most outrageous manner. They have no rights that are respected. They are killed, and their bodies thrown into ponds or mud-holes. They are mutilated by having ears and noses cut off." A loyalist from Texas declares: "What we of the South fear is that President Johnson's course will, by its *precipitancy*, enable the old set to reorganize themselves into place and power. For Heaven's sake preserve us, if you can, from this calamity." A loyal resident of North Carolina breaks forth: "I tell you, Sir, the only difference now and one year ago is that the flag is acknowledged as supreme, and there is some fear manifested, and they

have no arms. The sentiment is the same. If anything otherwise, more hatred exists towards the Government. I know there is more towards Union men, both black and white." It is natural that such a people should already talk of repudiating the national debt. Here is a bit on this vital point. A young man in gray was asked: "Would it be safe to trust white men at the South with the power to repudiate the national debt?" To which he replied at once: "Repudiate? I should hope they would! I 'm whipped, and I 'll own it; but I 'm not so fond of a whipping that I 'm going to pay a man's expenses while he gives it to me. Of course, there are not ten men in the whole South that would n't repudiate!" Thus spoke the Rebel uniform. But here are the grave words of a candidate for Congress in Virginia, in his address to the people: —

"I am opposed to the Southern States being taxed at all for the redemption of this debt, either directly or indirectly; and if elected to Congress, I will oppose all such measures, and I will vote to repeal all laws that have heretofore been passed for that purpose; and in doing so, I do not consider that I violate any obligations to which the South was a party. We have never plighted our faith for the redemption of the war debt. The people will be borne down with taxes for years to come, even if the war debt is repudiated. It will be the duty of the Government to support the maimed and disabled soldiers, and this will be a great expense; and if the United States Government requires the South to be taxed for the support of Union soldiers, we should insist that all disabled soldiers should be maintained by the United States Government, without regard to the side they had taken in the war."

Again I say, Forewarned, forearmed. Surely there can be no limits to our resistance, when such spirits are seeking to capture the National Government; but beyond that general resistance, which must make us postpone the day of surrender, and invoke the protection of Congress, we must insist upon *special guaranties* in the organic law.

1. As the Rebellion began with the pretension that a State might withdraw from the Union, it is plain that the *Unity of the Republic* must be affirmed, — not indirectly, but directly, — not, as in Mississippi, by simply declaring the late Act of Secession null and void, but as in Missouri, where the relations of the State to the Union are thus frankly stated: "That this State shall ever remain a member of the American Union; *that the people thereof are a part of the American Nation;* that every citizen owes paramount allegiance to the Constitution and Government of the United States; and that no law or ordinance of this State in contravention or subversion thereof can have any binding force." In contrast with this plain renunciation, the proceedings of Mississippi have no more significance than the vulgar saying, "Big as a piece of chalk." As security for the future, they are nothing, absolutely nothing. And permit me to say, that the whole Convention, so far as we have been informed, was little better than a Rebel conspiracy to obtain political power.

2. As the Rebellion was waged in denial of the *Equal Rights* of the colored race, it is essential not only that Slavery should be renounced, but also that all men should be hailed as equal before the law; and this en-

franchisement must be both civil and political. Unless this is done, the condition of the freedman will be deplorable. Exposed to every brutality, he will not be heard as a witness against his oppressor. Compelled to pay taxes, he will be excluded from all representation in the government. Without this security, Emancipation is illusory. It is a jack-o'-lantern, which the poor slave will pursue in vain. Even if Slavery cease to exist, it will give place to a condition hardly less galling. There will be serfdom, apprenticeship, peonage, or some other device of Slavery. According to the poet, there are different "circles" in Hell, each with its own terrible torments; and the unhappy African will only escape from one of these into another. And all this will be beyond correction or remedy, if not at the outset guarded against by organic law.

3. As the *national debt* was incurred for the suppression of the Rebellion, this, too, must be fixed beyond repeal. Unless this is done, it is evident, from reason as well as from testimony, that the representatives of the Rebel States will coalesce with others for its repudiation. Mississippi, which leads in the present effort to capture the national capital, is the original author of repudiation. Out of the legislative halls of this State the monster sprang. There was its birth. It will be simply true to its past history, as well as to its present animosities, when this State leads in the repudiation of the national debt. Nothing short of madness will allow any such opportunity. No Rebel State should be readmitted, unless bound irrevocably to the support of the national debt and the payment of the interest.

4. The *assumption of the Rebel debt* must be positively forbidden. Already ex-Rebels insist upon its payment. Such voices come from Mississippi and Virginia. Ex-Rebel newspapers, whose editors have taken the oath of allegiance, uphold this debt. But Congress has already led the way in denouncing it. For a State to assume this criminal obligation would be oppressive to the people, and especially to the freedmen. It would be a drain upon the resources of the State. It would be an insult to the whole country. This debt, whether at home or abroad, has been incurred for the support of the Rebellion, and must be treated accordingly. It is part of the crime. Here, too, there must be a guaranty.

5. As the *national peace and tranquillity* depend essentially upon the overthrow of monopoly and tyranny, here is another occasion for special guaranty against the whole pretension of color. No Rebel State can be readmitted with this controversy still raging, and ready to break forth. So long as it continues, the land will be barren. Agriculture and business of all kinds will be uncertain, and the country will be handed over to a fearful struggle, with the terrors of San Domingo to darken the prospect. In shutting out the freedman from his equal rights at the ballot-box, you open the doors of discontent and insurrection. Cavaignac, the patriotic President of the French Republic, met the present case, when, speaking for France, he said: "I do not believe repose possible, either in the present or the future, except so far as you found your political condition on universal suffrage, loyally, sincerely, completely accepted and observed."[1] It is

[1] Moniteur, May 21, 1850, p. 1761.

impartial suffrage that I claim, without distinction of color, so that there shall be one equal rule for all men. And this, too, must be placed under the safeguard of Constitutional Law.

6. As the *education of the people* is essential to the national welfare, and especially to the development of those principles of justice and morality which constitute the only sure foundation of a Republican Government, and as, according to the census, an immense proportion of the people of the Rebel States, without distinction of color, cannot read and write, it is obvious that public schools must be established for the equal good of all. The example of Massachusetts must be followed, which, after declaring in its Constitution that "wisdom and knowledge, as well as virtue, diffused generally among the body of the people, are necessary for the preservation of their rights and liberties," proceeds to direct the Legislature and magistrates, in all future periods, "to cherish the interests of literature and the sciences," and especially "public schools and grammar schools in the towns." All this must enter into our work of reconstruction, and become one of our guaranties.

Such are six capital subjects of special guaranty: the unity of the Republic; the national obligations to the national freedmen; the national obligations to the national creditors; the rejection of the Rebel debt; the establishment of national peace and tranquillity, so that it cannot be disturbed by any monopoly and tyranny founded on color; and, lastly, the education of the people. All these are too important, too transcendent, too essential to the national safety, to be left

the prey or sport of Rebel passions; nor can they be abandoned to any vague promise or inference of any kind. They must be fixed in characters clear as the sky and firm as the earth. Not to require this protection is unpardonable weakness. "If Philip dies," said the Athenian orator, "you will soon raise another Philip; since it is not so much by his own power as by your carelessness that he grew to such greatness." And so do I say now, even if the Rebellion is dead, you will soon raise another, unless you learn to be wise. Believe me, that man is dangerous who does not see danger in this Rebel Oligarchy, now conspiring to hoist itself into power.

Therefore I lay down one undeniable, essential principle,— that these guaranties must be established; and I appeal to my fellow-citizens throughout the country to insist upon them. As they concern the National Security and the National Faith, it is clear that they should be established by the Nation. The object is national. The power to establish them is national also. It is part of that great instinctive right of *self-defence*, common to nations and to men, which has no limits, except in the benign constraints of a Christian civilization. It is a right not only from the Constitution of the United States, but also from the constitution of civil society itself. There is no nation without it. In the weakest it is as manifest as in the mightiest. Never before was the occasion for its exercise plainer. And who shall say that the nation may defend itself on the murderous battle-field, and may not, when the battle has been won, require that "Security for the Future" which is the declared object of war?

Do you ask where in the Constitution this unquestionable power is found? I answer, in the same clause where you find the power to raise armies, and hurl them upon the Rebel enemy, — in the same clause where you find the power to erect fortifications, bastions, and bulwarks for the national defence, — in the same clause where you find the power to incur the national debt for the national defence, — and also in the same clause where President Lincoln found the power to emancipate the slave. It is a national power for the protection of the nation, and it may be exercised to any extent needed. It is idle to say that the war is over, and therefore the power is suspended. In one sense the war is over, and in another it is not. Battles have ceased; but Security for the Future is not yet obtained, and this security is found only in irreversible guaranties.

This national power is still in full operation, and as completely constitutional as the power to raise armies. It assumes for the present purpose two forms: first, the power to hold military possession of the Rebel States, so long as required for security, — whether months or years; and, secondly, the power to affix the terms of peace and restoration. As it is idle to say that the war is over, so it is equally idle to say that this power, in either of its forms, is limited by the Constitution. This same mistake was made by James Buchanan, when, at the beginning of the Rebellion, he weakly declared, that, under the Constitution, he could not "coerce a State," and his Cabinet assented. God forbid that now, at another moment not less critical, the same pretension should triumph again. Of course all patriots see now how the golden opportunity was

lost at first. May no such golden opportunity be lost again! Nobody doubts now that a State in rebellion may be "coerced." Nobody doubts now that the victories of Grant, the march of Sherman, and the charge of Sheridan were strictly constitutional. But this "coercion" must endure just so long as may be needed to obtain Security for the Future, — it may be for months, or it may be for years. There is no argument for it at the beginning which is not equally strong for it now. There is nothing in the Constitution against it. Everything in the Constitution is for it. The rules or limitations which the Constitution may establish for a condition of peace are entirely inapplicable to a condition of rebellion in any of its stages, whether at beginning, middle, or end. Whatever is needed for the suppression of the Rebellion and the establishment of safeguards against its recurrence is constitutional. It is failure to exercise this power that is unconstitutional.

But beyond this ample, are two other powers in the Constitution, under which all needful guaranties can be secured. The first is that vast untried power springing from the injunction that "the United States shall guaranty to every State in this Union a republican form of government." This power, long dormant, sprang into activity with the Acts of Secession. Loyal government being overthrown *in fact*, so that the whole region was like "a clean slate," it became the duty of the national authority to set up loyal governments, and at the same time to see that they were republican in form, — which must mean at least that they are governments of the majority, and not of the minority; and I think I cannot err, if I add, that, according to fundamental principles of the Declaration of Independence,

they must be founded on the equal rights of all men and "the consent of the governed." It is very clear that in this clause of guaranty there is an inexhaustible power, by virtue of which the national authority can not only exact all needful guaranties, but can mould these rebel communities according to the model of a Christian Commonwealth.

There is still another source of power under the Constitution; and this is according to the analogies of the Territories. Since all loyal government has ceased to exist, the whole region, in all its divisions and subdivisions, has, *from the necessity of the case*, lapsed under the national jurisdiction, which is as complete for all practical purposes as that same jurisdiction over the District of Columbia.

I do not stop to dwell on these sources of power. Elsewhere I have vindicated them; and I have never been answered, except by the phrase that a State cannot go out of the Union: as if, in presence of *the fact of rebellion*, this was anything more than a phrase. It is indisputable, that, *in fact*, the Rebel States have ceased to be, as President Lincoln expressed it, in "proper practical relation with the Union," and, still further, that they have long been without any government we can recognize. Surely this is enough to open the door for the national authority. When loyal government ceased, the jurisdiction of the National Government began, whether military or civil; and this jurisdiction still continues, complete in all respects, without hindrance or limitation from the Constitution.

Thus, out of three inexhaustible fountains may the National Government derive its authority: first, from the war powers, which do not expire except with the

establishment of Security for the Future; secondly, from the injunction to guaranty a republican form of government, which is at once a power and a duty; and, thirdly, from the necessity of the case, as with outlying Territories, which have no other government. Under each and all of these the guaranties can be obtained.

In obtaining the needed guaranties there are certain practical points which cannot be disregarded. Knowing what we need, and satisfied concerning the powers of the National Government, the path is easy. As there are ways to obtain guaranties, so also there are ways not to obtain them.

And, first, of ways not to obtain them.

1. Irreversible guaranties cannot be obtained by *haste.* No State must be precipitated back into the Union. Precipitation back will be hardly less fatal than that original precipitation which plunged the country into the abyss of war. When a State is readmitted, it becomes practically independent. Therefore prudence, care, and watchfulness are needed to see that the national interests are not imperilled by any sudden transformation.

2. Irreversible guaranties cannot be obtained merely by *Executive action.* Something more is needed. No President can truly say, "The State — it is I." He is only part of the State; and on this account there is a new motive to reserve. What he does is subject to the correction of Congress, and therefore cannot be final. But it is difficult to see under what authority the President can appoint officers not known to the Constitution or laws, as is the case with Provisional Governors. The Act of Congress authorizing their appointment

failed to become a law; so that no such office is "established by law," according to the requirement of the Constitution.

3. Irreversible guaranties cannot be obtained by *yielding to the prejudice of color,* and *insisting upon a separation of the races.* A voice from the West — God save the West! — revives the exploded theory of Colonization, perhaps to divert attention from the great question of Equal Rights. To that voice I reply, first, You ought not to do it, and, secondly, You cannot do it. You ought not to do it, because, besides its intrinsic and fatal injustice, you will deprive the country of what it most needs, which is labor. Those freedmen on the spot are better even than mineral wealth. Each is a mine, out of whom riches can be drawn, provided you let him share the product. And through him that general industry will be established which is better than anything but virtue, and is, indeed, a form of virtue. It is vain to say that this is the country of the "white man." It is the country of Man. Whoever disowns any member of the Human Family as Brother disowns God as Father, and thus becomes impious as well as inhuman. It is the glory of republican institutions that they give practical form to this irresistible principle. If anybody is to be sent away, let it be the guilty, and not the innocent. Expatriation of leading Rebels will be a public good. As long as they continue here, they will resist the establishment of guaranties; but it is little short of madness to think of exiling loyal persons, whose strong arms are needed, not only for the cultivation of the soil, but also for protection of the Government itself.

4. Irreversible guaranties cannot be obtained by

oaths. All oaths are uncertain. It has been said, "The strongest oaths are straw." Political oaths have become a proverb, whether in England or France. They have been taken freely, and have been broken without hesitation. The Milanese, in reply to the Emperor Barbarossa, said, "You had our oath, but we never swore to keep it." Our Rebels are openly taught the same duplicity. They have been told authoritatively, that the oath was unconstitutional, and therefore not binding; and so they take it easily. But who can find a guaranty in such a performance? A Swedish priest lately poisoned the sacramental wine; and so these counsellors have poisoned this sacred obligation. But if an oath be taken, it must not stop with support of the Proclamation of Emancipation. It must embrace all those other objects of guaranty, including especially the national freedman and the national creditor. Each of these will be a test of loyalty. But at a moment like the present, at the close of a ferocious rebellion, when hatred and passion are only pent up and not extinguished, an oath is little better than a cotton thread to hold a frigate scourged by a northwester. The Hollanders might as well undertake to swear each individual wave that beats upon their coast. They did better. They made dikes. "Gone to swear a peace," says Constance, most scornfully, as she denounced an oath of pretended reconciliation. And shall we be content when our Rebels merely "swear a peace"?

5. Irreversible guaranties cannot be obtained by *pardons.* It is enough to state the proposition; for all must see at once that rights will be very uncertain, if with no protection except the gratitude of a pardoned

Rebel. A jail-delivery is not a guaranty. Such a breakwater would be impotent against the malignant sea. Without accepting absolutely the dogma of Cardinal Mazarin, that human beings are governed more through hope than gratitude, it is clear, that, until security is won, we cannot afford to part with any influence or agency through which control may be established. Mercy is a beautiful prerogative, exercised always with inexpressible delight; but on this account we must guard against its fascination, and not, in the generous luxury, imperil a whole community. This is very clear. A pardon is in form an act of grace, but in reality a letter of license. This is all. It leaves the criminal free to renew his crime, whether by force or guile. It has in it no single point of security. As well defend a citadel by kisses or by flowers.

Such are some of the modes to be rejected. And now, in the second place, consider the ways in which guaranties may be obtained.

1. *Time is necessary.* There must be no precipitation. Time is the gentlest, but most powerful revolutionist. Time is the surest reformer. Time is peacemaker. Time is necessary to growth, and it is an element of change. For thirty years and more this wickedness was maturing. Who can say that the same time will not be needed to mature the conditions of permanent peace? Who can say that a generation must not elapse before these Rebel communities have been so far changed as to become safe associates in a common government? Plainly, this cannot be wrought at once. Wellington exclaimed at Waterloo, "Would that night or Blücher were come!" Time alone was

substitute for a powerful ally. It was more through time than battle that La Vendée was changed to loyalty. Time, therefore, we must have. Through time all other guaranties may be obtained; but time itself is a guaranty.

2. *Meanwhile follow Congress in the present exclusion of Rebels from political power.* They must not be voted for, and they must not vote. On this principle I take my stand. Let them buy and sell; let them till the ground; and may they be industrious and successful. These things they may do; but they must not be admitted at once into the copartnership of our Government. As well might the respectable banker reïnstate his son at once in the firm he has betrayed, and invest him again with all the powers of a partner. The father received his son with parental affection, and forgave him; but he did not invite the criminal to resume his former desk in Wall Street. And yet the son, who had robbed and forged on an unprecedented scale, is as worthy of trust in the old banking-house as one of our Rebels in the government of the country. A long probation will be needed before either can be admitted to former fellowship. The state of outlawry is the present condition of each, and this condition must not be hastily relaxed.

Congress has already set the example by excluding from "any office of honor or profit under the Government of the United States," and also by excluding, as attorney or counsellor, from any court of the United States, every person who has voluntarily given "aid, countenance, counsel, or encouragement" to the Rebellion, or who has "sought or accepted any office whatever" under it, or who has yielded to it any

"voluntary support." By this and the supplementary Act,[1] all Rebels are debarred from holding office under the United States, or from practising in the courts of the United States. This exclusion, thus sanctioned by Congress, must be the pole-star of our national policy. If Rebels cannot be officers under our Government, they ought not to be voters. They should be politically disfranchised, purely and simply as a measure of necessary precaution, and in order to prepare the way for those guaranties which we seek. "Vipers cannot use their venom in the cold." These are words of political wisdom, as of scientific truth; and a great Italian writer did not hesitate to inculcate from them the same lesson that I do now.

3. Surely, recent Rebels, who led in secession, and held office under the Rebellion, are poor professors to rally these communities to the support of the national freedman and the national creditor, and generally to the establishment of the guaranties essential to safety. Reason and experience warn us to postpone trust in such persons. Overcome in battle, they wrap themselves in a mantle of loyalty, tied by an oath, as

> "they who, to be sure of Paradise,
> Dying, put on the weeds of Dominic,
> Or in Franciscan think to pass disguised."

But character is not changed in a day; and that "Southern heart," which was "fired" against the Union, still preserves its vindictive violence. Even if for a moment controlled, who can tell how long it will continue in this mood? There is an ancient well-known fable, where a cat was transformed into a beautiful woman;

[1] Acts of July 2, 1862, and January 24, 1865: Statutes at Large, Vol. XII. p. 502; Vol. XIII. p. 424.

but, on the night of her marriage, hearing the sound of a mouse, she sprang from bed with all her original feline nature. And so a Rebel, transformed by political necromancy into a loyalist, will suddenly start in full cry to run down a national freedman or national creditor. So strong is nature. Horace tells us, "Drive it out with a pitchfork, and it will return." Therefore do I insist, put not political trust in the man who has been engaged in warring upon his country. I ask not his punishment. I would not be harsh. There is nothing humane that I would reject. Nothing in hate. Nothing in vengeance. Nothing in passion. I am for gentleness. I am for a velvet glove; but for a while I wish the hand of iron. I confess that I have little sympathy with those hypocrites of magnanimity whose appeal for the Rebel master is only a barbarous indifference towards the slave; and yet they cannot more than I desire the day of reconciliation. To this end I am with them, *so far as is consistent with safety;* but I cannot see my country sacrificed to a false idea. Pardon, if you will. Nobody shall outdo me in clemency. But do not trust the Rebel politically. The words of Shakespeare are not too strong to picture the danger of such attempt: —

> "Thou may'st hold a serpent by the tongue,
> A chafèd lion by the mortal paw,
> A fasting tiger safer by the tooth,
> Than keep in peace that hand which thou dost hold."

4. In obtaining guaranties we must rely upon acts rather than professions, and light our footsteps by "the lamp of experience." Therefore we turn from recent rebels to *constant loyalists.* This is only ordinary prudence. As those who fought against us should be for

the present disfranchised, so those who fought for us should be at once enfranchised, and thus a renovated state will be built secure on an unfaltering and natural loyalty. For a while the freedman will take the place of the master, verifying the saying that the last shall be first and the first shall be last. In the pious books of the East it is declared that the greatest mortification at the Day of Judgment will be when the faithful slave is carried to Paradise and the wicked master is sent to Hell; and this same reversal of conditions appears in the Gospel, where Dives is exhibited as suffering the pains of damnation while the beggar of other days is sheltered in Abraham's bosom. Therefore, in organizing this change, we follow divine justice. Surely nobody can doubt that Robert Small, the heroic slave who carried a Rebel steamer to our fleet and then became our pilot, deserves more of the Republic than a South Carolina official occupied at that very time as commissioner to regulate impressments in the Rebel army. To accept the latter and to reject the former will be not only the height of injustice, but the height of meanness. It will be a deed "to make heaven weep, all earth amazed."

5. Still further, in obtaining guaranties we must *look confidently to Congress*, which has plenary powers over the whole subject. Congress can do everything needful. It has already begun by excluding Rebels from office. It must continue its jurisdiction; whether through the war powers, or the duty to guaranty a republican form of government, or the necessity of the case, as in Territories, is a matter of little importance. It is of less importance under which of its powers this is done than that it is done. Continuing its jurisdiction, Congress must supervise and fix the

conditions of order, so that the National Security and National Faith shall not suffer. Here is a sacred obligation which cannot be postponed.

6. All these guaranties should be completed and crowned by *an Amendment of the Constitution of the United States,* especially providing that hereafter there shall be no denial of the electoral franchise or any exclusion of any kind on account of race or color, but all persons shall be equal before the law. At this moment, under a just interpretation of the Constitution, three fourths of the States actually coöperating in the National Government are sufficient for this change. The words of the Constitution are, that Amendments shall be valid to all intents and purposes, "when ratified by the Legislatures of three fourths of the several States," or, according to practical sense, *by three fourths of the States that have Legislatures.* If a State has no Legislature, it cannot be counted in determining this quorum, as it is not counted in determining the quorum of either House of Congress, where precisely the same question occurs. Any other interpretation recognizes the Rebellion, and plays into its hands, by conceding its power, through rebellious contrivance, to prevent an Amendment of the Constitution essential to the general welfare.

Such are practical points to be observed in obtaining the much needed guaranties. Congress will soon be in session; and to its courageous conduct, in the exercise of unquestionable powers, we all look with hope and trust. Meanwhile the President, as commander-in-chief, has large military powers, which may be exercised without control until the meeting of Congress. To him I

now appeal. Speaking from this platform, surrounded by this concourse of his friends, and giving voice to the sentiments of my heart, in harmony with the sentiments of Massachusetts, I cannot fail in respect or honor, while I address him with that plainness which belongs to republican institutions: —

Sir, your power is vast. A word from you may make an epoch. It may advance at once the cause of Universal Civilization, or quicken anew the Satanic energies of a fearful barbarism. It may give assurance of security and reconciliation for the future, or it may scatter uncertainty and distrust, while it postpones that *Truce of God* which is the longing of our hearts. As your power is vast, so is your responsibility. Act, we entreat you, so that our country may have no fresh sorrow. Do not hazard Emancipation, which is the day-star of our age, and the special jewel in the crown of your martyred predecessor, by any concession to its enemies. Do not put in jeopardy all that we hold most dear, by untimely attempt to bring back into the national copartnership any of those ancient associates who have warred upon their country. Let them wait. You have said that treason is "crime," and not merely difference of opinion. Do not let the criminals bear sway. The patriot dead cry out against such surrender, and all their wounds bleed afresh. Congress has set the example, by declaring that no person engaged in the Rebellion shall hold office. For the present, follow Congress. Follow the Constitution also, which knows no distinction of color, and do not sacrifice a whole race by resuscitating an offensive Black Code, inconsistent with the National Security and the National Faith. There also is the Declaration of In-

dependence, which now shines like the sun in the heavens, rejoicing to penetrate every by-way and every cabin, if you will not stand in its light. Let it shine, until the Republic has completely dispelled that disgusting pretension which is at once a stupendous monopoly and an impious caste. Above all, do not take from the loyal black man and give to the disloyal white man; do not confiscate the political rights of the freedman, who has shed his blood for us, and lavish them upon his Rebel master. And remember that justice to the colored race is the sheet-anchor of the national credit.

Speaking always with the same frankness, I ask leave to address the Secretary of War very briefly: —

Sir, there is yet room for your energies. That region won to Union and Liberty by the victory you organized must not be allowed to lapse under its ancient masters, the perjured assertors of property in man. It must not be abandoned. Let it be held by arms until it smiles with the charities of life, and all its people are guarded by an impenetrable shield.

And still speaking with equal plainness, I venture to press one controlling consideration upon the Secretary of the Treasury: —

Sir, you are the guardian of the national finances. Use the peculiar influence belonging to this position so that nothing shall be done to impair the National Credit. See to it especially that no person is admitted to political power in any Rebel community who spurns the National Faith, sacredly plighted to the national freedman as well as to the national creditor. Such is the ordinance of Providence, that the fortunes of the two are joined inseparably together. Credit is

sensitive. It needs that all the resources of the country should be brought into activity, — that agriculture should be fostered, that commerce should be revived, that emigration should be encouraged; but this cannot be done without that *security* which is found in equal laws and a contented people. The farmer, the merchant, the emigrant must each feel secure. Land, capital, and labor are of little value, except on this essential condition. The loyal people who have contributed so much, and now hold your bonds, trust that this essential condition will not fail through any failure on your part, and that you will not consent to open a political volcano, spouting smoke and red-hot lava, in an extended region whose first necessity is peace. There is an order in all things; and any concession to the criminal enemies of our country, until after the confirmation of the National Security and the National Faith, is simply an illustration, on a gigantic scale, of the cart before the horse.

For myself, fellow-citizens, pardon me, if I say that my course is fixed. Many may hesitate; many may turn away from those great truths which make the far-reaching brightness of the Republic; many may seek a temporary favor by untimely surrender: I shall not. The victory of blood, which has been so painfully won, must be confirmed by a greater victory of ideas, so that the renowned words of Abraham Lincoln may be fulfilled, and "this nation, under God, shall have a new birth of Freedom; and government of the people, *by the people*, and for the people, shall not perish from the earth."[1] To this end I seek no merely formal Union,

[1] Address at the Consecration of the National Cemetery at Gettysburg, November 19, 1863.

seething with smothered curses, but a practical, moral, and political Unity, founded on common rights, knit together by common interests, inspired by a common faith, and throbbing with a common love of country, — where our Constitution, interpreted anew, shall be a covenant with Life and a league with Heaven,[1] and Liberty shall be everywhere not only a right, but a duty. John Brown, on his way to the scaffold, stooped to take up a slave child. That closing example was the legacy of the dying man to his country. That benediction we must continue and fulfil. The last shall be first; and so, in this new order, Equality, long postponed, shall become the master principle of our system and the very frontispiece of our Constitution. The Rebellion was to beat down this principle, by founding a government on the alleged inferiority of a race. The attempt has failed, but not, alas! the insolent assumption of the conspirators. Pursuing our victory, I now insist that this assumption shall be trampled out. A righteous government cannot be founded on any exclusion of race. This is not the first time that I have battled with the barbarism of Slavery. I battle still, as the bloody monster retreats to its last citadel; and, God willing, I mean to hold on, if it takes what remains to me of life.

[1] William Lloyd Garrison was in the habit of calling it "a covenant with Death and a league with Hell."

APPENDIX.

The appearance and condition of Andrew Johnson before the Senate, and representatives of foreign powers, when taking the oath as Vice-President, March 4, 1865, was not calculated to inspire general confidence. But, in the absence of further display of the same kind, the public had become silent, hoping something better. The memory of that incident threw a shadow over the great office he was called to assume. Some were favorably affected by the avowals of patriotism in numerous off-hand speeches, although touching but a single chord. Nothing was said of the great principles of Reconstruction, but treason was to be made "odious." The repetition of himself impressed Chief Justice Chase, as well as Mr. Sumner, and he said to the latter, "Let us see the President, and try to give him another topic." So, in company, at an early hour of the evening, about a week after the commencement of his Presidency, they called, and united in urging him to say something for the equal rights of our colored fellow-citizens. Though reserved in language, he was not unsympathetic in manner, so that, after the interview, the Chief Justice, on reaching the street, said: "Did you see how his face lighted at your appeal to carry out the Declaration of Independence?" A few days later Mr. Sumner called alone, and received from the President positive assurance of agreement on the suffrage question. His words were, "On this question, Mr. Sumner, there is no difference between us, — you and I are alike." An account of these interviews, and the sequel, was subsequently given in an address at Boston, October 2, 1866.

Very soon it was too apparent that the President had adopted an opposite course. States were to be hurried back by Presidential prerogative on the electoral basis anterior to the war. Mr. Sumner from the beginning had regarded the votes of colored fellow-citizens necessary to a proper reconstruction, — first, as an act of justice to them, and, secondly, as a counterpoise to the disloyal. He had urged this solution in the Senate, and had repeatedly presented it to President Lincoln. The Diary of Hon. Gideon Welles, Secretary of the Navy,

according to an article published by him,[1] shows how Mr. Sumner pressed this duty in the most intimate councils. It appears that this Secretary was at the War Department, Sunday evening, April 16th, the day after President Lincoln's death, where he met Speaker Colfax, Mr. Covode, the very earnest Representative from Pennsylvania, Messrs. Dawes and Gooch, Representatives of Massachusetts, and Mr. Sumner. After stating that Mr. Stanton read to them the drafts of orders for the reorganization of Virginia and North Carolina, the article proceeds: —

"Before concluding that which related to North Carolina, Mr. Sumner interrupted the reading, and requested Mr. Stanton to stop until he could understand whether any provision was made for enfranchising the colored man. Unless, said he, the black man is given the right to vote, his freedom is mockery.

"Mr. Stanton said there were differences among our friends on that subject, and it would be unwise, in his judgment, to press it in this stage of the proceedings.

"Mr. Sumner declared he would not proceed a step, unless the black man had his rights. He considered the black man's right to vote the essence, the great essential."

In conformity with this declaration Mr. Sumner continued to act, as appears in correspondence and speech. His Eulogy on President Lincoln, at the request of the municipal authorities of Boston, was an appeal for the black man. So also was his private correspondence, during this summer, with Secretary Stanton, Secretary McCulloch, Secretary Welles, Secretary Harlan, and Attorney-General Speed, all of the Cabinet.

Meanwhile the President went forward in his "policy." The country was alarmed. Hon. Thaddeus Stevens, the acknowledged leader of the House of Representatives, partook of the anxiety which ensued. Though not yet prepared to press the ballot for all, he was strenuous against the assumption and precipitation of the President.

As early as May 10th he wrote to Mr. Sumner, from Philadelphia :—

"I see the President is precipitating things. Virginia is recognized. I fear before Congress meets he will have so bedevilled matters as to render them incurable. It would be well, if he would call an extra session of Congress. But I almost despair of resisting Executive influence."

This was followed by another letter, under date of June 3d, from Caledonia, Penn., where were his iron-works: —

[1] Lincoln and Johnson, their Plan of Reconstruction and the Resumption of National Authority; First Paper: Hartford Daily Times, March 19, 1872.

"Is it possible to devise any plan to arrest the Government in its mad career? When will you be in Washington? Can't we enlist bold men enough to lay the foundation of a party to take the helm of this Government and keep it off the rocks?"

Then, under date of June 14th, another, also from Caledonia: —

'Is there no way to arrest the insane course of the President in 'reorganization'? Can you get up a movement in Massachusetts? I have thought of trying it in our State Convention. If something is not done, the President will be crowned king before Congress meets. How absurd his interfering with the internal regulations of the States, and yet considering them as 'States in the Union'!"

Also, under date of August 17th, from Caledonia: —

"I have written very plainly to the President, urging delay. But I fear he will pursue his wrong course. With illegal courts and usurping 'reconstruction,' I know not where you and I shall be. While we can hardly approve all the acts of the Government, we must try and keep out of the ranks of the Opposition. The danger is that so much success will reconcile the people to almost anything."

August 26th, Mr. Stevens wrote from his home at Lancaster, Penn.: —

"I am glad you are laboring to avert the President's fatal policy. I wish the prospect of success were better. I have twice written him, urging him to stay his hand until Congress meets. Of course he pays no attention to it. Our editors are generally cowardly sycophants. I would make a speech, as you suggest, if a fair occasion offered. Our views ('Reconstruction and Confiscation') were embodied in our resolutions [in the Republican State Convention, recently held] at Harrisburg, amidst much chaff. Negro suffrage was passed over, as heavy and premature. Get the Rebel States into a territorial condition, and it can be easily dealt with. That, I think, should be our great aim. Then Congress can manage it."

In the same spirit, Hon. B. F. Wade, of the Senate of the United States, July 29th, wrote from his home at Jefferson, Ohio: —

"I regret to say, that, with regard to the policy resolved upon by the President, I have no consolation to impart. To me all appears gloomy. . . . . The salvation of the country devolves upon Congress and against the Executive. Will they be able to resist the downward tendency of events? My experience is not calculated to inspire me with confidence."

Hon. Henry Winter Davis, the able, eloquent, and courageous Representative in Congress from Baltimore, June 20th, in a long letter to Mr. Sumner, on our perils and duties, wrote: —

"One way is to pass a law by two-thirds over the President's veto, prescribing the conditions of reconstruction of any State government, and declaring *none* republican in form which excludes negroes from voting. Such a law the President will be obliged to obey and execute. . . . . The other mode of solving the problem, over the head of the President, is to pass an Amendment of the Constitution prescribing universal suffrage. . . . . We have the requisite majority to pursue either of these plans; but is there nerve for the work? I have too often failed to inspire my political friends with that elevated sense of their own authority to dictate the course of affairs, to be sanguine of success in measures which require so much unity, energy, and singleness of purpose as these. The last Congress was not equal to it; is the present Congress? . . . . Now do me the favor to give me your views as fully as I have given you mine. I trust you are not, as I am, in despair."[1]

In the course of the summer a pamphlet was published in Boston, entitled "Security and Reconciliation for the Future: Propositions and Arguments on the Reorganization of the Rebel States," — being a collection of resolutions by Mr. Sumner, with the article in the *Atlantic Monthly*,[2] the speech on the admission of Senators from Arkansas,[3] and the Louisiana debate.[4] The large edition of this collection drew attention, and helped prepare for the speech at the State Convention. A few extracts will show its reception.

Dr. George B. Loring, the agriculturist, afterwards Chairman of the State Committee of the Republican party in Massachusetts, and President of the Massachusetts Senate, wrote from Salem: —

"I only wish all our statesmen had taken the ground adopted by yourself; it would have saved us infinite trouble. It entitles you to eternal thanks, and receives daily more and more assent."

Hon. John C. Underwood, District Judge of the United States, wrote from Alexandria, Va.: —

"I have read your collected arguments on the subject of Reconstruction with great pleasure and profit. Let me thank you for convincing me, very much against my will, that to allow immediate representation to the Rebel States would be a cruel breach of faith and honor to the freedmen, and that we of the South must be just to these poor people, and submit to a genuine republican government, before we deserve admission again into the American family. I trust no petty personal ambition will prevent my full appre-

[1] Mr. Davis's brilliant life was closed by an early death, December 30, 1865, which deprived the country of his inestimable services in Reconstruction. See *post*, Vol. XIII. p. 104.

[2] *Ante*, Vol. X. p. 167. [3] *Ante*, Vol. XI. p. 351. [4] *Ante*, p. 179.

ciation of the immensely important work for our country and humanity which you have so well performed."

Hon. Charles Eames, the able lawyer and scholar, former Commissioner to the Sandwich Islands, and Minister at Venezuela, residing in Washington, wrote from the sea-shore at Long Branch : —

"It is a noble monumental record, worthy both of the subject and of the Senator, and which will stand a landmark in our parliamentary history. Every new day, as it comes, brings new attestation of your wisdom and foresight, and of the truthful views which from the first, and almost, if not altogether, alone in Congress, you took and faithfully expounded on the whole question of Reconstruction. The idea of hurrying these lately Rebel communities into participation in the enactment and administration of our laws seems to me the most absurd blunder ever perpetrated in history, with the possible exception of that earlier and still more monstrous enormity of error which assigned to them the right to give by silence a negative vote on the purposed change of our fundamental law."

Hon. John Y. Smith, an able and independent thinker, wrote from Madison, Wisconsin : —

"Pray, honored Sir, do not be discouraged by the stupid prejudices with which you have to contend, but fight it out, and you may save the nation; for at no time during the war was it in greater peril than it is at this moment. The Ship of State has gallantly borne up through the storms of war, but I fear that President Johnson, with the best intentions, is running her straight upon the rocks."

A few extracts from newspapers attest the impression made by the Speech.

The Boston *Transcript,* which reported the speech on the afternoon of its delivery, said : —

"Mr. Sumner has made many powerful addresses, on many important occasions; but we think our readers will admit that he has never presented a more masterly argument, on a more important occasion, than that which he has urged on the Union Republicans in his speech of to-day. Clear and pointed in statement, felicitous in illustration, admirable in arrangement, cogent in logic, affluent in learning, with occasional bursts of eloquence which light up and animate, but never disturb, the course of the argument, the speech cannot fail to exert an immense influence on the formation of that public opinion which is to determine the mode by which one of the most momentous questions ever brought before the American people shall be definitely settled. . . . . Mr. Sumner does not merely attempt to convince the understanding; he strikes through it to the national conscience and sense of humanity and honor. His sentences are full of heat, as well as

light, — will lodge in the minds they inform, and influence the will which votes, as well as the judgment which assents."

The Albany *Morning Express* said : —

"Let us call Senator Sumner a fanatic, if we will; let us pronounce him a man of one idea, if we choose; but let us at least award him the honor he deserves. . . . . If Charles Sumner is wrong, his example is right. We have not so many politicians true to eternal principle, we have not so many statesmen devoted with a single purpose even to their own conception of the best interests of the country, we have not so many counsellors studious only of strict justice, that we can afford to throw away the Senator from Massachusetts. Whether we regard him as right or wrong, there is something sublime in his steady, persistent, unwavering devotion to his idea. Such honesty cannot be impugned. Such fidelity cannot be misinterpreted. . . . . Senator Sumner has always been in advance of the mass. He is a leader a long way ahead, a pioneer through trackless mazes. It is his mission to discover a path where the throng shall follow."

With different spirit, the New York *Herald*, in an article entitled "Senator Sumner on the Rampage," said : —

"We now have an essay from Senator Sumner, who, mounted on his 'Bay horse,' makes a furious assault upon the President and his policy, and, in fact, everybody, except the blacks in the South. . . . . He is determined to fight it out, if it takes the remainder of his life. The public now know his position, and just what the Jacobins intend to do. The President can also understand the nature of the opposition which he is to have arrayed against him in the next Congress. . . . . The Rebellion, he declares, is not ended, nor Slavery abolished. If he means by the former term Northern rebellion, he is not far out of the way ; for it is very evident that a rebellion has commenced in the North, and has been inaugurated in Massachusetts, with Senator Sumner as high-priest and prophet."

The New York *World*, in an article entitled "The Massachusetts Declaration of War against the President," said : —

"It is not worth while to spend words on the formal resolves of the Massachusetts Convention. They but condense, in more staid and decorous language, the sentiments of Mr. Sumner's speech ; and we prefer to dip out of the fountain. The unanimous election of Mr. Sumner as the presiding officer, the applause which greeted his speech, the panegyrics lavished upon it by the Republican press of Boston, and its harmony with every public utterance in Massachusetts, from the Faneuil Hall meeting in May down, are so many seals of its authentication as a true exposition of the purposes of the Republican party. Charles Sumner is the Republican platform incarnate."

Other papers show how it was received in States lately in rebellion.

The Memphis *Argus*, of Tennessee, said : —

"Yesterday we received, under the frank of 'C. Sumner,' his recent infamous speech at Worcester, Massachusetts. We use the word *infamous* advisedly, temperately; for viler or more wilful and malicious slanders of a great, suffering, and submissive people, vanquished in war by overwhelming odds, but honestly accepting all the legitimate results of their defeat, and patriotically anxious to resume their old places in a full, restored Union, were never published to the world by the filthiest political scavenger that ever plied his trade in the foul services of party."

The Augusta *Transcript*, of Georgia, said : —

"To show the infamous slanders to which the fanatical leaders are obliged to resort, in order to goad on their followers to the new crusade against the South, we republish an extract from Mr. Sumner's last speech in Massachusetts."

In England, Colonel T. Perronet Thompson, the Freetrader, and former Member of Parliament, in his series of articles in the Bradford *Advertiser*, after enumerating the topics, said : —

"The man who has no curiosity to know what the first statesman in America says on all these heads would go to bed without asking whether the fire in the next street was put out, or if the house next his own began to smoke. The very jobbers in Rebel bonds, or builders of the Shenandoah, might feel a desire to know which way the thing was going."

The *Scotsman*, a foremost journal at Edinburgh, commenced a leader on this speech as follows : —

"It would be at least difficult to name a man in the United States, or rather the States now under process of being reunited, who is better entitled to a respectful hearing, all the world over, than Mr. Charles Sumner. He has had but one object, — a noble object, worthy any calculable amount of struggle and sacrifice; and he has pursued it ardently, bravely, disregarding both party and personal consequences, and letting no other object stand in the way or turn him aside for a moment from the straight path. He has sought only the Abolition of Slavery, and has deemed nothing else worth fighting for."

The response by correspondence was prompt and earnest from various parts of the country. The letters from which extracts are taken, with the exception of that from Great Salt Lake City, were received immediately after the delivery of the speech.

Charles Stearns, ardently against Slavery, and familiar with the Rebel States, wrote from Springfield : —

"After an absence from good old Massachusetts of eleven years, my heart was made glad, the other day, by seeing a notice in the papers that you were to speak at the Republican Convention at Worcester. I immediately hastened thither, and felt happy beyond measure, as I listened to the deafening applause with which your appearance upon the platform was greeted."

Rev. John T. Sargent, the Liberal clergyman, wrote from Boston: —

"That noble speech of yours at the Worcester Convention, so complete in its analysis of our national condition, dangers, and duties, ought to be printed in letters of gold, and emblazoned henceforth as the established moral code of every one of our States."

David A. Wasson, the honest thinker and student of philosophy, wrote from Boston: —

"God bless you, and make you strong for the arduous and immense work that is immediately before you! The coming session of Congress will, I think, be preëminently the critical and cardinal day in all American legislation. I look forward to it with unspeakable anxiety. If only your counsels had been accepted, how clear, how easy, all would be! Now the situation is fearfully complicated."

Rev. George C. Beckwith, Secretary of the American Peace Society, wrote from Boston: —

"Let me express the earnest hope that you will economize your strength for the great conflict soon to come during the approaching Congress. I never doubted the final success of our arms; but when the sword should be sheathed, I have always expected to see our worst crisis in our last grapple with slaveholders. We shall quite need all your prudence, forecast, energy, courage, and decision, to meet the dangers ahead from returning Rebels."

Rev. Charles Brooks, eminent for his services to education, wrote from Medford: —

"I thank you, I thank you a thousand times, for your sound, comprehensive, and patriotic speech at Worcester. Shakespeare says, 'Things by season seasoned are.' Never was a word more fitly spoken. It is the best speech I have read for years, and will become historic."

William I. Bowditch, the able conveyancer and Abolitionist, wrote from Boston: —

"I read your speech yesterday morning with great satisfaction, and yet with considerable misgiving as to whether its truths will be acted on. I doubt if the North has been punished enough to induce it to forego the attempt of trying again to circumvent God."

P. R. Guiney, on the day the speech was delivered, wrote from Boston: —

"I am under an overwhelming conviction, that, unless the views which you express are substantially adhered to, Despotism will have gained all that Liberty won in our recent war. The Battle of Gettysburg was not more of a crisis than this. May God prosper you!"

Professor George W. Greene, scholar and author, wrote from East Greenwich, R. I.: —

"I received your Worcester speech this morning. I must write a line to say I have read it carefully and thoughtfully, and say 'Amen' to it all. God grant it may go into every house and every heart! I look with deep anxiety for the opening of Congress. You have yet your hardest fight to win; but it is the fight of God and Humanity, and you will win it."

Professor Charles D. Cleveland, an ardent Abolitionist and successful teacher, recently Consul at Cardiff in Wales, wrote from Philadelphia: —

"Many, many thanks to you for your noble speech at the Worcester Convention. Oh that your words might unite with the heart of the President and bring forth appropriate fruits! For the last two or three months I have been quite desponding as to his course."

John Penington, the scholarly bookseller, wrote from Philadelphia: —

"With its matter I fully sympathize; but I was particularly struck with the aptitude and felicity of your illustrations of the various points of your argument."

William Goodell, the early and constant Abolitionist, author of "Slavery and Anti-Slavery," a history also of the "American Slave Code," wrote from Bozrahville, Connecticut, where he was then residing: —

"In my rural retreat, where I am for the present recruiting my health, a copy of the *Commonwealth* containing your great speech at Worcester, September 14th, providentially falls into my hands, and I cannot forbear trespassing upon your time one moment to congratulate and to thank you, which I do most heartily, upon your great achievement, and for your signal service to your country, in the hour of its greatest peril, — *greatest* I say, because, as I fear, so little perceived and so little understood. . . . . If you had spent the whole summer in preparing that speech, I see not how you could have improved it, nor how your time and talents could have been more worthily or more usefully employed. . . . . You well say, 'We must look confidently to Congress'; to which permit me to add, that for the

leadership of Congress the country must look to *you*, whose 'course is fixed,' who 'will not hesitate,' who 'will not surrender.'"

Hon. Wayne MacVeagh, Chairman of the Republican State Committee of Pennsylvania, afterwards Minister at Constantinople, wrote from West Chester, Pennsylvania: —

"I have just finished reading your superb speech at Worcester, in the complete form in which you sent it to me, and cannot go to bed without thanking you for it. The right word, in the right time, by the right man, — what more should we ask?"

William Hickey, Chief Clerk of the Senate, where he had been a life-long officer, and author of a well-known edition of the Constitution with accompanying documents, wrote from Washington: —

"Your speech ably maintains the consistency, ability, and patriotism which have uniformly distinguished your course, from your first essay in the sacred cause of Liberty, which has elicited so much of disinterested zeal and indomitable courage and perseverance on your part as to call forth, in my hearing, from the most honorable and intelligent of your political opponents from the South, declarations attributing those qualities to you in an eminent degree, giving you credit for consistency and unmistakable integrity of purpose. Your exertions have in a very great degree contributed towards the defeat of the Rebellion and the victory of the Government over its enemies, and you have now the satisfaction of enjoying the fruits of your labors and the exercise of your literary superiority and transcendent talents."

Hon. John C. Underwood, who had written shortly before on Reconstruction,[1] wrote from Alexandria, Virginia: —

"I thank you for your Convention speech. Its positions and arguments are so overwhelming that I feel almost certain that your efforts will succeed with our people, and that you will be acknowledged the wise statesman and enlightened Christian patriot that I know you are."

General Saxton, an Antislavery army officer, commanding in South Carolina, wrote from Charleston: —

"I most fully sympathize with and cordially indorse every word and line. In the future, the wisdom of your position will be fully established and vindicated."

Hon. Charles D. Drake, an eminent lawyer and law-writer, afterwards United States Senator from Missouri, and Chief Justice of the Court of Claims, wrote: —

[1] *Ante*, p. 349.

"Being detained at home by indisposition, I was glad of the privilege of at once reading your latest views on the great questions of the day in connection with Reconstruction. For them, and for the heroic spirit with which you take your stand, and determine 'to fight it out on that line,' I offer you my most sincere and fervent thanks. May God preserve your life and health, and enable you to fight it out to a complete victory!"

Hon. Charles Durkee, formerly Senator of the United States from Wisconsin, and then Governor of Utah, wrote from Salt Lake City to Governor Farwell, of Wisconsin: —

"I have just finished reading Mr. Sumner's great speech delivered at the Massachusetts State Convention. What a masterly argument! It embodies the condensation of Calhoun, the strength of Webster, and more than the eloquence of Clay. In logic, in illustration, in simplicity of truth, I have never read a state-paper that equals it. Its timely utterance how fortunate for the country! He inspires some of the most vital parts of the Constitution (which heretofore have been a dead letter) with new life and activity. Washington and Lincoln led in the first and second revolutions, but it was left for Charles Sumner to lead in the third, — a revolution in *Constitutional and Republican ideas.* Be so kind as to thank him, in my name, for this timely effort in behalf of his country and in the cause of the oppressed."

Such words from distant places were an encouragement to the speaker. Evidently he was not alone, nor had he spoken in vain.

QUORUM OF STATES NECESSARY IN ADOPTION OF A CONSTITUTIONAL AMENDMENT.

Letter to the New York Evening Post, September 28, 1865.

To the Editor of the New York Evening Post.

AS a faithful reader of the "Evening Post" for many years, I have perused your article insisting that all present effort for guaranties of national security and national faith must be postponed, in order to obtain the ratification of the Constitutional Amendment by which slavery is abolished throughout the United States. If the Constitutional Amendment were not already ratified by the requisite number of States, I should doubt if even this most desirable object could be a sufficient excuse for leaving the national freedman and the national creditor exposed to peril, when exertions now can save them. But allow me to inquire if you do not forget, that, according to usage of the National Government in analogous cases, this Amendment has been already ratified by the requisite number of States, so that at this moment it is valid, to all intents and purposes, as part of the Constitution? There was a butcher once who looked everywhere for his knife, forgetting that he held it between his teeth; there also was the good Dr. Dove, who was in love without knowing it; and you

have laughed, I am sure, at the story told by Southey to illustrate this condition, where the traveller, asking how far it was to a place called "The Pan," was answered directly, "You be in the Pan now." It seems to me, that, like the traveller, the doctor, and the butcher, you already have what you desire; so that, even according to your programme, the way is clear for insisting upon those other things embraced under "Security for the Future."

The Constitution of the United States decides that "the Congress, whenever *two thirds of both Houses* shall deem it necessary, shall propose amendments to this Constitution, ... which shall be valid, to all intents and purposes, as part of this Constitution, when ratified by *the Legislatures of three fourths of the several States.*" On these words the simple question arises, What constitutes the quorum?

But the usage of the National Government in analogous cases has determined that the quorum is founded on the States *actually participating in the Government.* This has been decided in both Houses of Congress. The House of Representatives led the way in fixing its quorum *according to actual representation,* or, in other words, at "a majority of the members chosen."[1] The Senate, after careful consideration and protracted debate, followed in establishing a similar rule.[2] The Constitutional Amendment was adopted by both houses *organized according to this rule.* The national debt has been sanctioned by both houses *thus organized.* Treaties

[1] Thirty-seventh Cong. 1st Sess., July 19, 1861: House Journal, p. 117; Cong. Globe, p. 210.

[2] Thirty-eighth Cong. 1st Sess., May 4, 1864: Senate Journal, p. 401; Cong. Globe, p. 2087. See, *ante,* Vol. IX. pp. 169–175, Speech on the Constitutional Quorum of the Senate.

also with foreign powers have been sanctioned in the Senate *thus organized.*

Applying this rule, the quorum of States requisite for the ratification of the Constitutional Amendment is plainly three fourths of the States *actually participating in the Government,* or, in other words, three fourths of the States having "Legislatures." Where a State has no Legislature, it may be still a State, but it cannot be practically counted in the organization of Congress; and I submit that the same rule must prevail in the ratification of the Constitutional Amendment. The reason of the rule is the same in each case. If you insist upon counting a rebel State, having no Legislature, you make a concession to rebellion. You concede to a mutinous State the power to arrest, it may be, the organization of Congress, or, it may be, amendments to the Constitution important to the general welfare. This is not reasonable. Therefore, on grounds of reason as well as usage, I prefer the accepted rule.

If this conclusion needed the support of authority, it would find it in the declared opinion of one of our best law-writers, who is cited with respect in all the courts of the country. I refer to Mr. Bishop, who, in the third edition of his "Commentaries on the Criminal Law," published within a few days, discusses this question at length. In the course of his remarks he uses the following language: "If the matter were one relating to any other subject than Slavery, no legal person would ever doubt, that, when there are States with Legislatures and States without Legislatures, and the Constitution submits a question to the determination of 'the Legislatures of three fourths of the several States,' the meaning is, three fourths of the States which have

Legislatures. In fact, it does not require either legal wisdom or legal acumen to see this, provided we look at the point disconnected from the peculiar subject of Slavery."[1] The learned author then proceeds to illustrate this statement in a manner to which I can see no answer.

To my mind all this seems so plain that I am disposed to ask pardon for arguing it. Of course there is no question whether a State is *in* the Union or *out of* the Union. It is enough that it is without a Legislature, and on this point there can be no question. Being without a Legislature, it cannot be counted in determining the quorum.

Therefore, beyond all dispute, the Constitutional Amendment has been already ratified by the requisite number of States; so that Slavery is now constitutionally abolished twice,—first, by the Proclamation of President Lincoln, under the war powers of the National Constitution; and, secondly, by Constitutional Amendment. It remains that we should provide supplementary safeguards, and complete the good work that has been begun, by taking care that Slavery is abolished in spirit as well as letter, and that the freedmen are protected by further needed guaranties. Without this additional provision, I see small prospect of that peace and reconciliation which are the object so near our hearts.

I am, Sir, your obedient servant,

CHARLES SUMNER.

BOSTON, 28th September, 1865.

[1] Vol. I. § 776, note.

SELF-SACRIFICE FOR THE COLORED RACE.

EQUESTRIAN STATUE OF COLONEL SHAW, FIRST COMMANDER OF MASSACHUSETTS COLORED TROOPS.

ARTICLE IN THE BOSTON DAILY ADVERTISER, OCTOBER 2, 1865.

THE two colored regiments enlisted, equipped, and sent forth by Massachusetts have returned home and been mustered out. Officers and privates are now dispersed. The last music has died away. Of these two famous regiments, which made such a mark on the times, nothing now remains but the memory. This cannot die; for it belongs to the history of a race. But all who went have not returned. The youthful hero, so gentle and true, who was selected by the Governor to command the Fifty-Fourth Regiment, fell at the head of his men on the very parapets of the Rebel enemy, and was buried in the sand with his humble companions in arms, — thus in death, as in life, sharing their fortunes. Family, parents, wife, were left to mourn. As was said of "Bonnie George Campbell," in the beautiful Scotch ballad, —

> "Hame cam' his gude horse,
> But never cam' he."

Few who were in Boston at the time can forget that pleasant day in May, when this colored regiment, with

Colonel Shaw riding proudly at its head, passed by the State-House, where it had been equipped and inspired. Cheers and the waving of handkerchiefs greeted it. There were tears also. It was a joyous and a sad sight to see this new legion, acquired to the national service, promptly marching to its distant and perilous duty, under a commander who, turning away from the blandishments of life, consecrates himself to his country. Nor was another consecration forgotten. It was to the redemption of a race. Massachusetts had sent forth many brave regiments; but here was the first regiment of colored soldiers marshalled at the North. It was an experiment, destined to be an epoch. By the success of this regiment a whole race was elevated. As he went forth, it became less an incident of war than an act of magnanimity and moral grandeur. Sidney, who refused the cup of cold water, was one of our young hero's predecessors.

Not long after came tidings of the bloody assault on Fort Wagner, when, by an advance without parallel over an open beach, exposed to a storm of shot and shell, these new-made soldiers of a despised color, sleepless, dinnerless, supperless, vindicated their title as bravest of the brave. They had done what no other troops had done during the war. This was their Bunker Hill, and Shaw was their martyred Warren. Though defeated, they were yet victorious. The regiment was driven back; but the cause was advanced. The country learned to know colored troops, and they learned to know themselves. From that day of conflict nobody doubted their capacity or courage as soldiers. There was sorrow in Massachusetts as we were told how many had fallen, and that the beloved officer so

recently admired in our streets was sleeping in an unknown grave; but even this sorrow did not blind an intelligent people to the magnitude of the event. Grief was chastened by honest pride. Swelling hearts were soothed by the thought that much had been done for humanity.

A desire arose at once for a monument to commemorate alike the hero and the event. But the Rebellion was then raging. It was no time for monuments. At last, with the overthrow of the Rebel arms, the time seems to have arrived. The youthful commander still sleeps with his comrades in death. There let him sleep. Westminster Abbey has no resting-place more honorable. But his patriotic sacrifice and the great event deserve commemoration, as well for gratitude as for example. Some propose a monument on the spot where he fell. This may be made; but it can be only a mound or pile of stones, to be seen by ships as they enter the harbor of Charleston. This is not enough. It will not tell the whole story.

The monument should be in Massachusetts, where the hero was born, and where the regiment was also born. Each belonged to Massachusetts, — the martyr by double title: first, as he drew his breath here, and, secondly, as he commanded this regiment of Massachusetts. Let the monument be here. Of course, no common stone or shaft will be sufficient. It must be of bronze. It must be an equestrian statue. And there is a place for it. Let it stand on one of the stone terraces of the steps ascending from Beacon Street to the State-House. It was in the State-House that the regiment was equipped and inspired. It was from the State-House that the devoted commander rode to death. Let

future generations, as long as bronze shall endure, look upon him there riding always, and be taught by his example to succor the oppressed and to surrender life for duty. Especially let legislators of Massachusetts, by daily sight of the symbolic statue, be gratefully led to constant support of the cause for which he died. Here is a theme for Art, and its elements are youth, beauty, self-sacrifice, death, and a great cause.

On the Continent of Europe, by general usage, only members of a royal family are allowed the honor of an equestrian statue. In the unequalled monument by Rauch, at Berlin, the royal Fritz is mounted, but his generals are about him standing. Near by is Blücher, who was prince and marshal, also standing. In England there are equestrian statues of kings, and of the Duke of Wellington. But this is no reason why a grateful people should not decree an equestrian statue to a youthful hero, whose duty was on horseback, and who was last seen in our streets on horseback. As an American citizen he belonged to our sovereignty, and we fitly celebrate him with the highest honors. Few belonging to any royal family have so good a title. In the Republics of Italy, during the early ages, when royalty did not exist, there were equestrian statues. The first of these in merit, and one of the first in time, was the renowned statue in bronze of the *condottiere* Bartolommeo Coleoni, who, after a lapse of centuries, is still admired as he rides bravely in a public square of Venice, while the artist has secured the immortality of his own name by engraving it upon the girth of the saddle. It is sometimes said, on doubtful authority, that this early chieftain was the first to mount cannon on wheels, so that they could be used in the field. But

our chieftain did more than mount cannon, and the triumphant experiment with which his name is linked surpasses far anything in the life of an Italian trooper. His act was above any triumph of battle. It was a victory of ideas, and belongs to the sacred history of Humanity.

Let the monument be made. Boston has a sculptor without a superior among living artists, whose soul and genius would be in the work. Already a colored person, well known among us, with a heart full of gratitude, has subscribed five hundred dollars. Other colored persons are contributing in smaller sums, according to their means. They properly lead now in tribute to him who died in leading them. But others of ampler means must see that this generous effort does not fail. I should not suggest this, if I thought that I should take away from other things deserving aid. The present charity is so peculiar, that it appeals equally to all who are moved by patriotism, by gratitude, by sympathy, or by Art.

This article was followed by a public meeting in the Council Chamber of the State-House, at the invitation of Governor Andrew, to consider the proposition of an equestrian statue in honor of Colonel Shaw. The following committee was appointed to collect subscriptions and superintend the erection of the statue : John A. Andrew, Charles Sumner, Joshua B. Smith, Charles R. Codman, Samuel G. Howe, Robert B. Storer, Frederick W. Lincoln, Jr., James L. Little, William W. Clapp, Jr., Charles Beck, Rev. Leonard A. Grimes, Peleg W. Chandler, William G. Weld, Edward Atkinson, Charles W. Slack, Robert E. Apthorp, Henry Lee, Jr., Edward W. Kinsley, George B. Loring, LeBaron Russell, Henry I. Bowditch.

At a meeting of this committee, Charles Sumner, Samuel G. Howe, Charles Beck, George B. Loring, LeBaron Russell, Henry I. Bowditch, and Charles R. Codman were appointed a sub-committee to select an artist, to contract with him, to secure a proper place for the statue, and to superintend its erection.

THE LATE RICHARD COBDEN.

LETTER TO MRS. COBDEN, COVERING RESOLUTIONS OF THE REPUBLICAN STATE CONVENTION OF MASSACHUSETTS, OCTOBER 5, 1865.

THE letter of Mr. Sumner first appeared in the London papers.

BOSTON, October 5, 1865.

MY DEAR MADAM, — I have been charged by the State Convention of the Republicans of Massachusetts, over which I had the honor of presiding, to communicate to you resolutions unanimously adopted by them, expressing their grateful regard for the memory of your late husband, and their sympathy in your bereavement.[1]

Knowing Mr. Cobden personally, as I did for many years, and corresponding with him on public questions, I confess a sense of personal loss beyond even that of my fellow-citizens. He was the good friend of my country, and he was my own private friend. Therefore, in making this communication, I desire to express my own individual grief.

His lamented death has caused a chasm not only in his own home and country, but here in the United States. We all miss him and mourn him. He was a wise and good man. An Englishman by birth, his heart and all his faculties were given to mankind, knowing

[1] *Ante*, pp. 307, 308.

well that the welfare and true glory of his own great country were best assured by such a dedication.

Hoping that you may be consoled in your sorrow, and that your children may be blessed in life, I ask you to accept the respect with which I have the honor to be, dear Madam,

Your very faithful servant,

CHARLES SUMNER.

The following reply was received from Mrs. Cobden.

DUNFORD, MIDHURST, December 27, 1865.

MY DEAR MR. SUMNER, — On behalf of myself and my children, I beg most kindly to thank you, and the members of the Republican State Convention of Massachusetts, for the resolutions, passed by them, of sympathy with us in our terrible bereavement.

These resolutions are rendered more valuable by the letter from yourself which accompanies them.

The expressions of sympathy and condolence which have reached us from public bodies and private individuals, in your and other countries, have been deeply grateful to my stricken heart; for they assure me of the wide-spread appreciation of the efforts of my beloved husband to promote the cause of international prosperity and peace.

From America they are especially grateful; for his sympathy with the cause of liberty to the slave was undoubted and intense. And it was on his way to Parliament, to speak on the Canadian question in its relation to the American Union, that he contracted the illness which ended his dear and noble life.

Pray accept the kindest remembrances of myself and children, and believe me to remain,

My dear Mr. Sumner,

Yours very sincerely,

C. A. COBDEN.

EQUAL RIGHTS *vs.* THE PRESIDENTIAL POLICY IN RECONSTRUCTION.

LETTER TO THE NEW YORK INDEPENDENT, OCTOBER 29, 1865.

BOSTON, October 29, 1865.

DEAR MR. EDITOR, — I rejoice that "The Independent" has planted itself firmly on the sure ground of Equal Rights. It is natural that a journal which has from the beginning so bravely and constantly opposed Slavery in all its pretensions should now insist that these pretensions shall be trampled out, so that nothing shall be left to breed future trouble. This can be done only through the establishment of Equal Rights.

To my mind, there never was a duty plainer or more instinctive. It is plain as the Moral Law, and it is instinctive as self-defence. If the country fails to do this justice now, it will commit a crime where guilt and meanness strive for mastery. On this head it is enough to say that it is a debt we owe to saviours and benefactors. But here all the instincts of self-defence harmonize with justice.

For the sake of the whole country, which suffers from weakness in any part, — for the sake of the States lately distracted by war, which above all things need security and repose, — for the sake of agriculture, which

is neglected there, — for the sake of commerce, which has fled, — for the sake of the national creditor, whose generous trust is exposed to repudiation, — and, finally, for the sake of reconciliation, which can be complete only when justice prevails, we must insist upon Equal Rights as the condition of the new order of things. So long as this question remains unsettled, there can be no true peace. Therefore I would say to the merchant, who wishes to open trade with this region, — to the capitalist, who would send his money there, — to the emigrant, who seeks to find a home there, — begin by assuring justice to all men. This is the one essential condition of prosperity, of credit, and of tranquillity. Without this, mercantile houses, banks, and emigration societies, having anything to do with this region, must all fail, or at least suffer in business and resources.

To Congress we must look as guardian, under the Constitution, of the national safety. I do not doubt its full power over the whole subject; nor do I doubt its duty to see that every pretended government organized by recent Rebels is treated as a present nullity. President Johnson then spoke well, when in Tennessee he said that "in the work of reorganization Rebels must take back seats, leaving place to those who have been truly loyal." There is the key-note of a just policy, which I trust Congress will adopt.

It is difficult to measure the mischief already accumulating from the policy that has been pursued. Looking at the positive loss to business and the productive industry of the country, it is painful. Looking at the distress it has caused among loyal people by the revival of the Rebel spirit, it is heart-rending.

Looking at it in any way, it is a terrible failure. It will be for Congress to apply the remedy.

Meanwhile you have the thanks of good people for your loyalty to the cause, and your strenuous efforts in its behalf. Go on, I entreat you, nor ever hesitate.

I am, dear Sir,

Your grateful fellow-laborer,

CHARLES SUMNER.

CLEMENCY AND COMMON SENSE.

A CURIOSITY OF LITERATURE; WITH A MORAL.

Article in the Atlantic Monthly, December, 1865.

"Instabile est regnum quod non clementia firmat."

"Incidis in Scyllam, cupiens vitare Charybdim."

HERE are two famous verses, both often quoted, and one a commonplace of literature. That they have passed into proverbs attests their merit both in substance and in form. Something more than truth is needed for a proverb. And so, also, something more than form is needed. Both must concur. The truth must be expressed in such form as to satisfy the requirements of Art.

Most persons, who have not occasionally indulged in such diversions, if asked where these verses are to be found, would say at once that it was in some familiar poet of school-boy days. Both have a sound as of something heard in childhood. The latter is Virgilian in tone and movement. More than once I have heard it insisted that it was by Virgil. But nobody is able to find it there, although the opposite dangers are represented in the voyage of Æneas: —

"Dextrum Scylla latus, lævum implacata Charybdis
Obsidet."[1]

[1] Æneïs, Lib. III. 420, 421.

Another poet shows the peril without the contrast: —

> "Scylla, et Charybdis Sicula contorquens freta
> Minus est timenda: nulla non melior fera est."[1]

Thinking of the historical proverb, I am reminded of the eminent character who first showed it to me in the heroic poem where it appears. I refer to the late Dr. Maltby, Bishop of Durham, who had been a favorite pupil of Dr. Parr, and was unquestionably among the best scholars of England. His amenity was equal to his scholarship. I was his guest at Auckland Castle early in the autumn of 1838. Conversation turned much upon books and the curiosities of study. One morning, after breakfast, the learned Bishop came to me with a small volume in his hand, printed in the Italian character, and remarking, "You seem to be interested in such things," he pointed to this much quoted verse. It was the Latin epic, "Alexandreïs, sive Gesta Alexandri Magni," by Philippus Gualterus, a mediæval poet of France.

Of course the fable of Scylla and Charybdis is ancient; but this verse cannot be traced to antiquity. For the fable Homer is our highest authority, and he represents the Sirens as unfriendly accessories, playing their part to tempt the victim.

These fronting terrors belong to mythology and to geography. Mythologically, they were two voracious monsters, dwelling opposite to each other, — Charybdis on the coast of Sicily, and Scylla on the coast of Italy. Geographically, they were dangers to the navigator in the narrow strait between Sicily and Italy. Charybdis was a whirlpool, where ships were often sucked to de-

[1] Seneca, Hercules Œtæus, 235, 236.

struction; Scylla was a rock, on which ships were often dashed to pieces.

Ulysses in his wanderings encountered these terrors, but by prudence and the counsels of Circe he was enabled to steer clear between them, although the Sirens strove to lure him on the rock. The story is too long; but there are passages like pictures, and they have been illustrated by the genius of Flaxman. The first danger on the Sicilian side is described in the Odyssey: —

> "Beneath, Charybdis holds her boisterous reign
> 'Midst roaring whirlpools, and absorbs the main;
> Thrice in her gulfs the boiling seas subside,
> Thrice in dire thunders she refunds the tide." [1]

Endeavoring to shun this peril, the navigator encounters the other: —

> "Here Scylla bellows from her dire abodes,
> Tremendous pest, abhorred by man and gods!
> . . . . .
> Six horrid necks she rears, and six terrific heads;
> Her jaws grin dreadful with three rows of teeth;
> Jaggy they stand, the gaping den of Death." [2]

Not far off were the Sirens, who strove by their music to draw the navigator to certain doom: —

> "Their song is death, and makes destruction please.
> Unblest the man whom music wins to stay
> Nigh the cursed shore and listen to the lay:
> No more that wretch shall view the joys of life,
> His blooming offspring or his beauteous wife!" [3]

Forewarned, the wise Ulysses took all precautions against the fatal perils. Avoiding the Sicilian whirlpool, he did not run upon the Italian rock or yield to the voice of the charmer. And yet he could not renounce the opportunity of hearing the melody. Stuff-

[1] Odyssey, tr. Pope, Book XII. 129–132.
[2] Ibid., 107–114.
[3] Ibid., 52–56.

ing the ears of his companions with wax, so that they could not be entranced by the Sirens, or comprehend any countermanding order which his weakness might induce him to utter, he had himself tied to the mast, — like another Farragut, — and directed that the ship should be steered straight on. It was steered straight on, although he cried out to stop. His deafened companions heard nothing of the song or the countermand, —

"Till, dying off, the distant sounds decay."

The dangers of both coasts were at length passed, not without the loss of six men, "chiefs of renown," who became the prey of Scylla. But the Sirens, humbled by defeat, dashed themselves upon the rocks and disappeared forever.

Few stories have been more popular. It was natural that it should enter into poetry and suggest a proverb. St. Augustine uses it, when he says, "*Ne iterum, quasi fugiens Charybdim, in Scyllam incurras.*"[1] Milton more than once alludes to it. Thus, in the exquisite "Comus," he shows these opposite terrors subdued by another power: —

"Scylla wept
And chid her barking waves into attention,
And fell Charybdis murmured soft applause."[2]

In the "Paradise Lost," while portraying Sin, the terrible portress at the gates of Hell, the poet repairs to this story for illustration: —

"Far less abhorred than these,
Vexed Scylla, bathing in the sea that parts
Calabria from the hoarse Trinacrian shore."[3]

And then again, when picturing Satan escaping from pursuit, he shows him

[1] In Joannis Evangelium Tract. XXXVI. § 9.
[2] Comus, 257 - 259.
[3] Book II. 659 - 661.

"harder beset,
And more endangered, than when Argo passed
Through Bosphorus betwixt the justling rocks;
Or when Ulysses on the larboard shunned
Charybdis, and by the other whirlpool steered." [1]

But, though frequently employing the story, Milton did not use the proverb, and here transforms at least one of the dangers.

Not only the story, but the proverb, was known to Shakespeare, who makes Launcelot use it in his plain talk with Jessica: — "Truly, then, I fear you are damned both by father and mother: thus, when I shun Scylla, your father, I fall into Charybdis, your mother: well, you are gone both ways." [2] Malone, in his note, written in the last century, says: "Alluding to the well-known line of a modern Latin poet, Philippe Gualtier, in his poem entitled 'Alexandreïs.'" To this testimony of Malone's, another editor, George Steevens, whose early bibliographical tastes excited the praise of Dibdin, adds: "Several translations of this adage were obvious to Shakespeare. Among other places, it is found in an ancient poem entitled 'A Dialogue between *Custom and Veritie*, concerning the use and abuse of Dauncing and Minstrelsie': —

"'While Silla they do seem to shun,
In Charibd they do fall.'"

But this proverb had already passed into tradition and speech. That Shakespeare should seize and use it was natural. He was the universal absorbent.

It did not require a Shakespeare to appropriate it. Brantôme, who wrote rather from hearing than study, so that his style is a record of contemporary language,

[1] Book II. 1016–1020.
[2] Merchant of Venice, Act III. Sc. 5.

in describing a great lady who escaped from Turks to fall into the hands of domestic robbers, likens the case to falling from Scylla to Charybdis.[1] A similar illustration drops from La Fontaine: —

> "La vieille, au lien du coq, les fit tomber par là
> De Charybde en Scylla."[2]

Thomson shows that it was a common illustration, when he describes Dunkirk as

> "the Scylla since
> And fell Charybdis of the British seas."[3]

Mr. Webster, in an argument before the Supreme Court of the United States, quotes and applies the words of Virgil describing these opposite perils, and warns against Charybdis.[4] The great orator of ancient Rome, in his second Philippic, where Mark Antony is assailed with all his splendid ability, after picturing the culprit as seizing and squandering an enormous property, exclaims: "What Charybdis was ever so voracious? Charybdis do I say? — who, if she existed at all, was a single animal."[5] Antony is worse than Charybdis, but there is no allusion to the sister peril. The proverb had no existence at that time.

The history of this verse seemed for a while forgotten. Like the Wandering Jew, it was a vagrant, unknown in origin, but having perpetual life. Erasmus, with learn-

[1] "Mais le malheur de la dame fut que, tumbant de Scylle en Carybde," etc. — *Vies des Dames Illustres*, Discours VI. art. 2: Œuvres (Paris, 1822–23), Tom. V. p. 201.

[2] La Vieille et les Deux Servantes: Fables, Liv. V. 6.

[3] Liberty, Part IV. 1075, 1076.

[4] Argument in the Rhode Island Case, January 27, 1848: Works, Vol. VI. p. 242.

[5] "Quæ Charybdis tam vorax? Charybdin dico? quæ, si fuit, fuit animal unum." — *Philippica II.* c. 27. See, also, In Verrem Act. II. Lib. V. c. 56; De Oratore, Lib. III. c. 41.

ing so vast, quotes it, with the variation *Incidit*, for *Incidis*, in his great work on Proverbs, and owns that he does not remember its author. Here is the confession: "*Celebratur apud Latinos hic versiculus, quocunque natus auctore, nam in præsentia non occurrit*": "This little verse is a commonplace among Latin writers, whoever the author, — for he does not at present occur to me."[1] But, though unable to recall its origin, it is clear that the idea it embodies found much favor with this representative of moderation. He dwells on it with particular sympathy, and reproduces it in various forms. This is the equivalent on which he hangs his commentary: "*Evitata Charybdi, in Scyllam incidi.*"[2] It is easy to see how inferior in form is this to the much quoted verse. It seems to be a rendering of some Greek iambics, also of uncertain origin, preserved by Apostolius,[3] one of the learned Greeks scattered over Europe by the fall of Constantinople. Erasmus quotes also another proverb with the same signification: "*Fumum fugiens, in ignem incidi,*"[4] which warns against running into the fire to avoid the smoke; and yet another, rendered from the Greek of Lucian: "*Ignoraveram autem quod, juxta proverbium, ex fumo in ipsum ignem compellerer*": "But I did n't know, that, according to the proverb, I should be driven from the smoke into the fire itself."[5] Horace teaches that fools shunning vices run upon the opposite: —

"Dum vitant stulti vitia, in contraria currunt";

[1] Adagia, Chil. I. Cent. V. Prov. 4: Opera (Lugd. Batav., 1703), Tom. II. col. 184.

[2] Ibid., col. 183.

[3] Cent. XVI. Prov. 49: Leutsch, Parœmiographi Græci (Gottingæ, 1851), Tom. II. p. 672.

[4] Adagia, Chil. I. Cent. V. Prov. 5: Opera, Tom. II. col. 184.

[5] Ibid. Lucian, Necyomant., 4.

and then he describes one man as smelling of pastils, and another of the goat: —

"Pastillos Rufillus olet, Gorgonius hircum." [1]

Erasmus quotes words of kindred sentiment from the "Phormio" of Terence: "*Ita fugias, ne præter casam*": which he tells us means that we should not so fly from any vice as to be incautiously carried into a greater.[2] In his letters the ancient fable recurs more than once. On one occasion he warns against the dangers of youth, and says, "Instead of the ears with wax, as in the Homeric story, the mind must be carefully sealed by the precepts of Philosophy." [3] Again he avows fear, lest, shunning Scylla, he fall on a much worse Charybdis: "*Nunc vereor ne sic vitemus hanc Scyllam, ut incidamus in Charybdim multo perniciosiorem.*" [4] And the same fear appears yet again, where he describes his straits: "*In has angustias protrusus sum, ut mihi, si Scyllam fugero, in Charybdim sit incidendum.*" [5] On another occasion he pictures himself as exposed in his expenses to the most voracious Charybdises: "*Ex his conjecturam facias licebit, quemadmodum hic dilabantur nummi, ubi nihil non meo sumptu geritur, et est mihi res cum duabus Charybdibus voracissimis.*" [6] The following is cited by Jortin from another letter of Erasmus: "Some say slanderously that I keep a medium. I confess it is a very impious thing to keep a

[1] Satiræ, I. ii. 24, 27.

[2] Adagia, Chil. I. Cent. V. Prov. 3: Opera, Tom. II. col. 182. Terent., Phormio, 767.

[3] Epist. MCCLXI., Joanni Vergaræ, Nov. 19, 1533: Opera, Tom. III. col. 1483.

[4] Epist. DLXXIV., Gulielmo Waramo, Archiepiscopo Cantuariensi, Maii 24, 1521: Ibid., col. 645.

[5] Epist. XIII., Joanni Sixtino Frisio, Oxoniæ, Oct. 28, 1497: Ibid., col. 11.

[6] Epist. CLXV., Rogerio Wentfordo, 1514: Ibid., col. 141.

medium between Christ and Belial; but I think it prudential to keep a medium between Scylla and Charybdis."[1] Thus did his instinctive prudence find expression in this favorite illustration.

If Erasmus were less illustrious for learning, perhaps if his countenance were less interesting, as we look upon it in the immortal portraits by two great artists, Hans Holbein and Albert Dürer, I should not be tempted to dwell on this confession of ignorance. And yet it belongs to the history of this verse, which has had strange ups and downs. The poem from which it is taken, after enjoying early renown, was forgotten, — and then again, after a revival, was forgotten, again to enjoy another revival. The last time it was revived through this solitary verse, without which, I cannot doubt, it would have expired forever.

Even before the days of Erasmus, who died in 1536, this verse had been lost and found. It was circulated as a proverb of unknown origin, when Galeotto Marzio — an Italian of infinite wit and learning,[2] who flourished in the latter half of the fifteenth century, and was for some time instructor of the children of Matthias Corvinus, King of Hungary — pointed out its author. In a work of *Ana*, amusing and instructive, entitled "De Doctrina Promiscua," which first saw the light in Latin, and was afterwards translated into Italian, the learned author says: "*Hoc carmen est Gualteri Galli de Gestis Alexandri, et non vagum proverbium, ut quidam non omnino indocti memincrunt.*" It was not a vague proverb, as some persons not altogether unlearned have

[1] Jortin's Life of Erasmus (London, 1808), Vol. II. p. 183.

[2] For a glimpse of this interesting character, see Tiraboschi, Storia della Letteratura Italiana (Modena, 1787–94), Tom. VI. pp. 384–393; Michaud, Biographie Universelle, *nom.* Galeotto (Marzio).

supposed, but a verse of the "Alexandreïs." And yet shortly afterwards the great master of proverbs, whose learning seemed to know no bounds, could not fix its origin. At a later day, Pasquier, in his "Recherches de la France," made substantially the same remark as Marzio. After alluding to the early fame of its author, he says: "*C'est luy dans les œuvres duquel nous trouvons un vers souvent par nous allegué, sans que plusieurs sçachent qui en fut l'auteur.*" In quoting the verse, the French author uses *Decidit* instead of *Incidis.*[1] The discovery by Marzio, and the repetition of this discovery by Pasquier, are chronicled at a later day in the Conversations of Ménage,[2] who found a French Boswell before that of Dr. Johnson was born. Jortin, in the elaborate notes to his Life of Erasmus, borrows from Ménage, and gives the same history.[3]

When Galeotto Marzio made his discovery, the poem was still in manuscript; but there were printed editions before the "Adagia" of Erasmus. An eminent authority — the "Histoire Littéraire de la France," that great work, commenced by the Benedictines, and continued by the French Academy — says that it was printed for the first time at Strasbourg, in 1513.[4] This is a mistake which has been repeated by Warton.[5] Brunet, in his "Manuel du Libraire," mentions an edition, without place or date, with the cipher of Guillaume Le Talleur, a printer at Rouen in 1487.[6] Panzer, in his "Annales Typographici," describes another edition, with the mon-

[1] Liv. III. ch. 29: Œuvres (Amsterdam, 1723), Tom. I. col. 276.
[2] Menagiana (Paris, 1715), Tom. I. p. 174.
[3] Vol. II. p. 285.
[4] Tom. XV. p. 117.
[5] History of English Poetry (London, 1824), Vol. I. p. clxvii, note.
[6] Tom. II. col. 1470, 5me édit.

ogram of Richard Pynson, the London printer at the close of the fifteenth century.[1] Beloe, in his "Anecdotes of Literature," also speaks of an edition with the imprint of Pynson.[2] There also appears to have been an edition under date of 1496. Then came the Strasbourg edition of 1513, by J. Adelphus. All these are in black letter. Next was the Ingolstadt edition, in 1541, in Italic, or, as it is called by the French, "cursive characters," with a brief life of the poet, by Sebastian Link. This was followed, in 1558, by an edition at Lyons, also in Italic, announced as now for the first time appearing in France, "*nunc primum in Gallia*," which was a mistake. This edition seems to have enjoyed peculiar favor. It has been strangely confounded with imaginary editions which never existed: thus, the Italian Quadrio notes especially one at London, in 1558;[3] and the French Millin assures us that the best was at Leyden, in 1558.[4] No such editions appeared; and the only edition of that year was at Lyons. After the lapse of a century, in 1659, there was another edition, by Athanasius Gugger, a monk of the Monastery of St. Gall, published at the Monastery itself, from manuscripts there, and with its own types, "*formis ejusdem.*" The editor was ignorant of the previous editions, and in his preface announces the poem as *a new work*, although ancient, — never before printed, to his knowledge, — eagerly regarded and desired by many, — and not less venerable for antiquity than for erudition: "*En tibi, candide Lector, opus novum, ut sit antiquum, nusquam, quod sciam, editum, a multis cupide inspectum et desideratum, non minus antiquitate quam eruditione*

[1] Vol. I. p. 510. [2] Vol. V. p. 255.
[3] Della Storia e della Ragione d' ogni Poesia, Vol. IV. p. 480.
[4] Magazin Encyclopédique, Tom. II. p. 52.

venerabile."[1] This edition seems to have been repeated at St. Gall in 1693; and these two, which were the last, appear to have been the best. From that time the poem rested undisturbed until our own day, when it found a place in that magnificent collection of patristic learning, the "Patrologiæ Cursus Completus" of Migne.[2] Such an edition ought to be useful in determining the text, for there must be numerous manuscripts in the Paris libraries. As long ago as 1795 there were no less than nineteen in the National Library, and also a manuscript at Tours, which had drawn forth a curious commentary by M. de Foucemagne.[3]

I ought not to forget here that in 1537 a passage from this poem was rendered into English blank verse, and is an early monument of our language. This was by Nicholas Grimoald, a native of Huntingdonshire, whose translation is entitled "The Death of Zoroas, an Egyptian Astronomer, in the First Fight that Alexander had with the Persians."[4] This is not the only token of the attention it awakened in England. Alexander Ross, chaplain of Charles the First, and author, famous from a couplet of "Hudibras," made preparations for an edition. His dedicatory letter was written, bearing date 1644, with two different sets of dedicatory verses, and verses from his friend David Echlin, the scholarly physician to the king,[5] who had given him this "great treasure." But the work failed to appear. The identical copy presented by Echlin, with many marginal notes from Quintus Curtius and others, is

[1] Histoire Littéraire de la France, Tom. XV. pp. 117, 118.

[2] Tom. CCIX.

[3] Millin, Magazin Encyclopédique, Tom. III. p. 181. Journal des Savans, Avril, 1760.

[4] Ritson's Bibliographia Poetica, p. 228.

[5] For a list of his works, see Watt's Bibliotheca Britannica, *nom.* ECHLIN.

mentioned as belonging to the Bishop of Ely at the beginning of the present century.[1] But the homage of the Scotchman still exists in his Dedicatory Epistle: "*Si materiam consideres, elegantissimam utilissimamque historiam gestorum Alexandri magni continet; certe, sive stylum, sive subjectum inspicias, dignam invenies quæ omnium teratur manibus, quamque adolescentes*

'Nocturna versentque manu, versentque diurna.'"[2]

It will be observed that he borrows superlatives to praise this poem as "most elegant and most useful," and by style and subject worthy of the daily and nightly study of youth. In his verses Ross declares Alexander not less fortunate in his poet than the Greek chieftain in Homer: —

"Si felix præcone fuit dux Græcus Homero,
Felix nonne tuo est carmine dux Macedo?"[3]

There was also another edition planned in France, during the latter part of the last century, by M. Daire, the librarian of the Celestines in Paris, founded on the Latin text, according to the various manuscripts, with a French translation; but this never appeared.[4]

Until its late appearance in the collection of Migne, it was only in ancient editions that this poem could be found. Of course these are rare. The British Museum, in its immense treasure-house, has the most important, one of which belonged to the invaluable legacy of the late Mr. Grenville. The copy in the library of Lord Spencer is the Lyons edition of 1558. By a singular fortune, this volume was missing some time ago from its place on the shelves; but it has

[1] Beloe's Anecdotes of Literature, Vol. V. pp. 255 - 260.
[2] Ibid., p. 256.
[3] Ibid., p. 257.
[4] Millin, Magazin Encyclopédique, Tom. III. p. 181.

since been found; and I have now before me a tracing from its title-page. My own copy — and the only one which I know this side of the Atlantic — is the Ingolstadt edition. It once belonged to John Mitford, and has on the fly-leaves notes in the autograph of this honored lover of books.

Bibliography dwells with delight upon this poem, although latterly the interest centres in a single line. Brunet does full justice to it. So does his jealous rival, Graesse, except where he blunders. Watt, in his "Bibliotheca Britannica," under the name "Galtherus, Philip," mentions the Lyons edition of 1558, on which he remarks, "The typography is very singular"; and then, under the name "Gualterus, de Castelliona," he mentions the edition of St. Gall in 1659. Curiously, the learned bibliographer seems to suppose these two editions to be different works, by different authors, — as they stand far apart, and without reference from one to the other. Clarke, in his "Repertorium Bibliographicum," bearing date 1819, where he gives an account of the most celebrated British libraries, mentions a copy of the first edition in the library of Mr. Steevens,[1] who showed his knowledge of the poem in his notes to Shakespeare; also a copy of the Lyons edition of 1558 in the library of the Marquis of Blandford, afterwards Duke of Marlborough. This learned bibliographer has a note calling attention to the fact that "there are variations in the famous disputed line in different editions of this poem," — that in the first edition the line begins "*Corruis in Syllam*," but in the Lyons edition "*Incidis in Scyllam*," while, as we have already seen, Pasquier

[1] At the sale of Mr. Steevens's library in 1800, it appears from a priced Catalogue that this copy brought £ 2 2*s*. — Clarke, Repert. Bibliog., p. 546; Graesse, Trésor de Livres Rares, *nom.* GALTHERUS.

says, "*Decidit in Scyllam.*"[1] Lowndes, in his "Bibliographer's Manual," says of the poem, "In it will be found that trite verse so often repeated, '*Incidis,*'" etc., — words which seem borrowed from Beloe.[2] "Trite" is hardly respectful.

Very little is known of the author. He is called in Latin Philippus Gualterus or Galterus; in French it is sometimes Gaultier and sometimes Gautier. The French biographical dictionaries, whether of Michaud or Didot, attest the number of persons with this name, of all degrees and professions. There was the Norman knight *sans Avoir*, a chief of the first Crusade. There also was another Gautier, known as the Sire d'Yvetot, stabbed to death by his sovereign, Clotaire, who is said afterwards in penitence to have erected the lordship of Yvetot into that kingdom which Béranger has immortalized. And there have been others in every walk of life. Fabricius, in his "Bibliotheca Latina Mediæ et Infimæ Ætatis,"[3] mentions no less than seventy-two Latin authors of this name. A single verse has saved one of these from the oblivion that has overtaken the multitude.

He was born at Lille, but at what precise date is uncertain. Speaking generally, it may be said that he lived and wrote during the second half of the twelfth century, while Louis the Seventh and Philip Augustus were kings of France, and Henry the Second and Richard Cœur-de-Lion ruled England, one century after Abélard, and one century before Dante. After studying at Paris, he went to establish himself at Châtillon, — but it is not known at which of the numerous towns

[1] Repertorium Bibliographicum, p. 244, note. *Ante*, p. 380.
[2] Anecdotes of Literature, Vol. V. p. 258.
[3] Tom. III. pp. 324-347.

of this name in France. Here he was charged with the direction of the schools, and became known by the name of the town, as appears in the epitaph, ambitiously suggestive of Virgil, which he wrote for himself: —

> "Insula me genuit, rapuit Castellio nomen;
> Perstrepuit modulis Gallia tota meis."

But he is known sometimes by his birthplace, and sometimes by his early residence. The highest French authority calls him "Gaultier of Lille, or of Châtillon."[1] He has been sometimes confounded with Gaultier of Coutances, Archbishop of Rouen, who was born in the island of Jersey,[2] — and sometimes with the Bishop of Maguelonne of the same name, reputed author of an Exposition of the Psalter, whose see was on an island in the Mediterranean, near the coast of France.[3]

Not content with residence at Châtillon, he repaired to Bologna, in Italy, where he studied the Civil and Canon Law. Returning to France, he became secretary of two successive Archbishops of Rheims, the latter of whom, by the name of William, — a descendant by his grandmother from William the Conqueror, — occupied this place of power from 1176 to 1201. The secretary enjoyed the favor of the Archbishop, who seems to have been fond of letters. It was during this period that he composed, or at least finished, his poem. Its date is sometimes placed at 1180; and there is an allusion in its text which makes it near this time.

[1] Histoire Littéraire, Tom. XV. p. 100. The article on Gaultier in this famous work was contributed by Ginguené, the well-known author of *Histoire Littéraire d'Italie*.

[2] Ibid., Tom. XVI. p. 536.

[3] The latter mistake is gravely made by Quadrio, in his great jumble of literary history, Tom. IV. p. 480; also by Peerlkamp, De Poetis Latinis Nederlandiarum, p. 15. See also Édélestand du Méril, Poésies Populaires Latines du Moyen Age, p. 149.

Thomas à Becket was assassinated before the altar of Canterbury in 1170; and this event, so important in the history of the age, is mentioned as recent: "*Nuper .... cæsum dolet Anglia Thomam.*"[1] The poem was dedicated to the Archbishop, who was to live immortal in companionship with his secretary: —

> "Vivemus pariter, vivet cum vate superstes
> Gloria Guillermi, nullum moritura per ævum."[2]

The grateful Archbishop bestowed upon the poet a stall in the cathedral of Amiens, where he died of the plague at the commencement of the thirteenth century.[3]

This does not appear to have been his only work. Others are attributed to him. There are dialogues *adversus Judæos*, which Oudin publishes in his collection entitled "Veterum aliquot Galliæ et Belgii Scriptorum Opuscula Sacra nunquam edita." This same Oudin, in another publication, speaks of "Opuscula Varia," preserved among the manuscripts in the Imperial Library[4] of France, as by Gaultier, although the larger part of these Opuscula have been ascribed to a very different person, Gaultier Mapes, chaplain to Henry the Second, King of England, and Archdeacon of Oxford.[5] But more recent researches would restore them to Philip Gaultier. An edition appeared at Hanover, in Germany, in 1859, by W. Müldener, after the Paris manuscripts, with the following title: "Die zehn Gedichte

[1] Alexandreïs, Lib. VII. 339–341. [2] Ibid., Lib. X. *ad finem.*

[3] Graesse, in his *Trésor de Livres Rares*, which ought to be accurate, makes a strange mistake in calling Gualterus "Episcopus Insulanus." He was never more than canon, and held no post at Lille. Fabricius entitles him simply "Magister Philippus Gualterus de Castellione, Insulanus." (Bib. Lat. Mediæ et Infimæ Ætatis, Tom. III. p. 328.) See also Wright's Early Mysteries and other Latin Poems of the Twelfth and Thirteenth Centuries, Preface, p. xviii.

[4] It is pleasant to call this magnificent library National.

[5] Histoire Littéraire, Tom. XV. p. 101.

des Walther von Lille genannt von Châtillon, zum ersten Male vollständig herausgegeben." Among these are satirical songs in Latin on the World, and also on Prelates, which, it is said, were sung in England as well as throughout France.[1] Indeed, the second verse of the epitaph already quoted may point to these satires: —

"Perstrepuit *mundus* Gallia tota *meis*."

Here, as in the "Alexandreis," we encounter the indignant sentiments inspired by the assassination of Becket. The victim is called "the flower of priests," and the king "*Neronior est ipso Nerone*," which may be translated by Shakespeare's "out-Herods Herod." But these poems, whether by Walter Mapes or Philip Gaultier, are forgotten. The "Alexandreis" has a different fortune.

The poem became at once famous. It had the success of Victor Hugo or Byron. Its author took rank, not only at the head of his contemporaries, but even among classics of antiquity. Leyser chronicles no less than ninety-nine Latin poets in the twelfth century,[2] but we are assured that not one of them is comparable to Gaultier.[3] M. Édélestand du Méril, who has given especial attention to this period, speaks of the "Alexandreis" as a "great poem," and remarks that its "latinity is very elegant for the time."[4] Another authority calls him "the first of the modern Latin poets who appears to have had a spark of true poetic genius."[5] And still another says, that, "notwithstanding all its defects, we must regard this poem, and the 'Philippis' of William

[1] Édélestand du Méril, Poesies Populaires Latines du Moyen Age, pp. 144–168. Wright, Latin Poems commonly attributed to Walter Mapes.

[2] Historia Poetarum et Poematum Medii Evi, pp. 867–768.

[3] Histoire Littéraire, Tom. XVI. p. 188.

[4] Poesies Populaires Latines du Moyen Age, pp. 149, 150.

[5] Millin, Magazin Encyclopédique, Tom. II. p. 51.

of Brittany, which appeared about sixty years later, as two brilliant phenomena in the midst of the thick darkness which covered Europe, from the decline of the Roman Empire to the revival of letters in Italy."[1] Pasquier, to whom I have already referred, goes so far, in his chapter on the University of Paris, as to illustrate its founder, Peter Lombard, as having for a contemporary "one Galterus, an eminent poet, who wrote in Latin verse the life of Alexander, under the title of the 'Alexandreis,' a great imitator of Lucan", and the learned writer then adds, that it is in his work that we find a verse often quoted without knowing the author.[2] These testimonies show his position among contemporaries, but there is something more.

An anonymous Latin poet of the next century, who has left a poem on the life and miracles of Saint Oswald, calls Homer, Gualtier, and Lucan the three capital heroic poets. Homer, he says, has celebrated Hercules, — Gualtier, the son of Philip, — and Lucan, so he declares, swells the praises of Cæsar, but these heroes deserve to be immortalized in verse much less than the holy confessor Oswald.[3] In England, the Abbot of Peterborough transcribed Seneca, Terence, Martial, Claudian, and the "Gesta Alexandri."[4] Even in Iceland there was an early version, edited at a later day by Arnas Magnæus (the Latin for Arne Magnussen), Secretary and Antiquary to the King of Denmark, and Professor in the University of Copenhagen, who, styling the poem the "Gualterian Alexandreis," characterizes the Icelandic version as "the incomparable mon-

[1] Michaud, Biographie Universelle, nom. Gualtier.
[2] Recherches de la France, Liv. III. c. 33. Œuvres, Tom. I. col. 276.
[3] Warton, History of English Poetry, Vol. I. p. cxxix. Dissertation II.
[4] Ibid., p. cxlvi.

ument of Northern antiquity."[1] The new poem was studied, even to the exclusion of ancient masters and of Virgil himself. Henry of Ghent, who wrote about 1280, says that it "was of such dignity in the schools of the grammarians that the reading of the ancient poets was comparatively neglected."[2] This testimony is curiously confirmed by the condition of the manuscripts that have come down to us, most of which are loaded with glosses and interlinear explanations, doubtless for public use in the schools.[3] It is sometimes supposed that Dante repaired to Paris. It is certain that his excellent master, Brunetto Latini, passed much time there. This must have been at the very period when the new poem was taught in the schools. Perhaps it it may be traced in the "Divina Commedia."

Next after the tale of Troy, the career of Alexander was at this period the most popular subject for poetry, romance, or chronicle. The Grecian conqueror filled a vast space in the imagination. He was the centre of marvel and of history. Every modern literature, according to its development, testifies to this predominance. Even dialects testify, and so does art. Wood engraving is supposed to have been invented in Italy, somewhere about 1285, by the two Cunio, and their earliest work was a representation, in eight parts, of the actions of Alexander, with explanatory verses in Latin beneath the prints.[4] In France, the professors of gram-

[1] "Veterem Islandicam versionem Alexandreïdos Gualterianæ, incomparabile antiquitatis septentrionalis monumentum." — FABRICIUS, *Bibliotheca Latina* (Venetiis, 1728), Tom. II. p. 256. Lib. IV. c. 2, § 3.

[2] Fabricius, Bib. Lat. Mediæ et Infimæ Ætatis (Hamburgi, 1735), Tom. III. p. 328. Leyser, Historia Poetarum et Poematum Medii Ævi, p. 765.

[3] Histoire Littéraire, Tom. XV. p. 118.

[4] Papillon, Traité Historique et Pratique de la Gravure en Bois, Tom. I. p. 84. Ottley, History of Engraving, Vol. I. pp. 10–21, 255.

mar at Toulouse were directed by statutes of the University, dated 1328, to read to their pupils "De Historiis Alexandri."[1] In England, during the reign of Henry the Third, the sheriff was ordered to procure the Queen's chamber at Nottingham to be painted with the history of Alexander, — "*Depingi facias historiam Alexandri circumquaque.*"[2] Chaucer, in his "House of Fame," places Alexander with Hercules,[3] and then again shows the universality of his renown: —

> "The storie of Alexandre is so commune,
> That every wight that hath discretioun
> Hath herd somwhat or all of his fortune."[4]

We have the excellent authority of the poet Gray for the remark, that the Alexandrine verse, which "like a wounded snake drags its slow length along," took its name from an early poem in this measure, called "La Vie d'Alexandre." There was also the "Roman d'Alexandre," contemporary with the "Alexandreïs," which Gray thinks was borrowed from the latter, apparently because the authors say that they took it from the Latin.[5] There was also "The Life and Actions of Alexander the Macedonian," originally written in Greek, by Simeon Seth, magister, and protovestiary or wardrobe-keeper of the palace at Constantinople, in 1070, and translated from Greek into Latin, and thence into French, Italian, and German.[6] Other forms have been perpetuated by the bibliographical care of the Roxburghe Club and the Bannatyne Club. Arabia contrib-

[1] Warton, History of English Poetry, Vol. I. p. clxix.

[2] Madox, History of the Exchequer (London, 1769), Vol. I. p. 377.

[3] Book III. 323.

[4] The Monk's Tale: *Alexander.*

[5] Observations on English Metre: Works (London, 1843), Vol. V. p. 258, note.

[6] Warton, History of English Poetry, Vol. I. pp. 133, 134.

uted her stories, and the Grecian conqueror became a hero of romance. Like Charlemagne, he had his twelve peers; and he also had a horn to proclaim his word of command, which took sixty men to blow, and was heard sixty miles, — being the same which Orlando sounded afterwards at Roncesvalles. That great career, which was one of the epochs of mankind, which carried in its victorious march the Greek language and Greek civilization, which at the time enlarged the geography of the world, opening the way to India, and which Plutarch in his "Morals" makes so Christian, was overlaid by an incongruous mass of fable and anachronism, so that the real story disappeared. Times, titles, and places were confounded. Monks and convents, churches and confessors, were mixed with achievements of the hero; and in an early Spanish History of Alexander, by Juan Lorenzo Segura, we meet such characters as Don Phœbus, the Emperor Jupiter, and the Count Don Demosthenes, and others with the constant prefix of Don; and the mother of Achilles is represented as placing him, when a child, in a convent of Benedictine nuns, — thus subjecting the early hero as the later to the same jumble of Heathen and Christian mythology.[1]

Philip Gaultier, with all his genius, has incongruities and anachronisms; but his poem is founded substantially upon the History of Quintus Curtius, which he has done into Latin hexameters, with the addition of long speeches and some few inventions. Aristotle is represented with a hideous exterior, face and body

[1] Poema de Alexandro Magno, Coplas 190, 275, 342, 387; also Prólogo, § 38: Sanchez, Coleccion de Poesias Castellanas anteriores al Siglo XV. (Madrid, 1782), Tom. III.

lean, hair neglected, and the air of a pedant exhausted by study. The soldiers of Alexander are called Quirites, as if they were Romans. The month of June in Greece is described as if it were in Rome: —

"Mensis erat, cujus juvenum de nomine nomen." [1]

Events connected with the passion of Jesus Christ are treated as having already passed in the time of Alexander.

The poem is divided into ten books, corresponding to the number in the original of Curtius,[2] and the ten initial letters of the books, when put together like an acrostic, spell the name of the Archbishop, *Guillermus*, the equivalent for William at that time, the patron of the poet. Besides this conceit, there is a dedication both at the beginning and the end. Quantity, especially in Greek or Asiatic words, is disregarded; and there are affectations in style, of which the very beginning is an instance: —

"*Gesta* ducis Macepûm totum *digesta* per orbem,
. .
Musa, refer." [3]

In the same vein is the verse, —

"Inclitus ille Clitus," etc.; [4]

and another verse, describing the violence of the soldiers after victory: —

"Extorquent torques, et inaures perdidit auris." [5]

A rapid analysis will at least exhibit the order of events in the poem, and its topics, with something of its character.

[1] Lib. I. 249.

[2] Vossius (De Poetis Latinis, Cap. VI.) is mistaken in saying that it had nine books, instead of ten. See also Menagiana, Tom. I. p. 174.

[3] Lib. I. 11–15. [4] Lib. V. 87. [5] Lib. III. 237.

Alexander appears, in the first book, a youth panting for combat with the Persians, enemies of his country and of his father. There also is his teacher, Aristotle. Philip dies, and the son repairs to Corinth for coronation. Under the counsels of Demosthenes, the Athenians declare against him. The young king arrives under the walls of Athens. Demosthenes speaks for war; Æschines for peace. The party of peace prevails; and the Macedonian turns to Thebes, which he besieges and captures by assault. The poet Cloades, approaching the conqueror, chants in lyric verses an appeal for pardon, and reminds him that without clemency a kingdom is unstable: —

"*Instabile est regnum quod non clementia firmat.*" [1]

And the words of this chant are still resounding. But Alexander, angry and inexorable, will not relent. He levels the towers, which had first risen to the music of Amphion, and delivers the city to the flames, — thus adding a new act to that tragic history which made Dante select Thebes as the synonym of misfortune.[2] Turning from these smoking ruins, he gathers men and ships against Persia. Traversing the sea, he lands in Asia; and here the poet describes geographically the different states of that continent, — Assyria, Media, Persia, Arabia, with its Sabæan frankincense and its single phœnix, — ending with Palestine, where a God was born of a Virgin, at whose death the world shook with fear. Commencing his march through Cilicia and Phrygia, the ambitious youth stops at Troy, and visits the tomb of Achilles, where he makes a long speech.

The second book opens with the impression on the

[1] Lib. I. 352.

[2] Inferno, Canto XXXIII. 89.

mind of Darius, menaced by his Macedonian enemy. He writes an insolent letter, which Alexander answers by moving forward. At Sardes he cuts the Gordian knot, and then advances rapidly. Darius quits the Euphrates with his vast army, which is described. Alexander bathes in the cold waters of the Cydnus, is seized with illness, and shows his generous trust in the physician that attended him, — drinking the handed cup, although said to be poisoned. Restored to health, he shows himself to his troops, who are transported with joy. Meanwhile the Persians advance. Darius harangues. Alexander also. The two armies prepare for battle.

The third book is of battle and victory at Issus, described with minuteness and warmth. Here dies Zoroas, the Egyptian astronomer, than whom nobody was more skilled in the stars, the origin of winter's cold or summer's heat, or in the mystery of squaring the circle, — "*circulus an possit quadrari.*" [1] The Persians are overcome. Darius seeks shelter in Babylon. His treasures are the prey of the conqueror. Horses are laden with spoils, and the sacks are so full that they cannot be tied. Rich ornaments are torn from the women, who are surrendered to the brutality of the soldiers. Only the royal family is spared. Conducted to the presence of Alexander, they are received with the regard due to their sex and misfortune. The siege and destruction of Tyre follow; then the expedition to Egypt and the temple of Jupiter Ammon. Here is a description of the Desert, which is said, like the sea, to have its perils, with its Scylla and its Charybdis of sand: —

[1] Lib. III. 157. This is the passage translated into blank verse by the early English poet, Nicholas Grimoald. See Ritson, Bibliographia Poetica, p. 228.

"Hic altera sicco
Scylla mari latrat; hic pulverulenta Charybdis."[1]

Meanwhile Darius assembles new forces. Alexander leaves Egypt and rushes to meet him. An eclipse of the moon causes sedition among his soldiers, who dare to accuse their king. The phenomenon is explained by soothsayers, and the sedition is appeased.

The fourth book opens with a funeral. It is of the Persian queen. Alexander laments her with tears. Darius learns at the same time her death and the generosity of his enemy. He addresses prayers to the gods for the latter, and offers propositions of peace. Alexander refuses these, and proceeds to bestow funeral honors upon the spouse of him he was about to meet in battle. Then comes an invention of the poet, which may have suggested afterwards to Dante that most beautiful passage of the "Purgatorio," where great scenes are sculptured on the walls.[2] At the summit of a mountain a tomb is constructed by the skilful Hebrew Apelles, to receive the remains of the Persian queen; and on this tomb are carved, not only kings and names of Greek renown, but histories from the beginning of the world: —

"Nec solum reges et nomina gentis Achææ,
Sed generis notat historias, ab origine mundi
Incipiens."[3]

Here in breathing gold is the creation in six days; the fall of man, seduced by the serpent; Cain a wanderer; the increase of the human race; vice prevailing over

[1] Lib. III. 389, 390. There is a contemporary poem in leonine verses on the death of Thomas à Becket, with the same allusion to opposite dangers: —

"Ut post Syrtes mittitur in Charybdim navis,
. . . . .
Flatibus et fluctibus transitis tranquille,
Tutum portus impulit in latratus Scyllæ."

Du Méril, *Poésies Pop. Lat. du Moyen Age*, p. 82.

[2] Canto X.

[3] Lib. IV. 190, 192.

virtue; the deluge; the intoxication of Noah; the story of Esau, of Jacob, of Joseph; the plagues of Egypt, —

"Hic dolet Ægyptus denis percussa flagellis";[1]

the flight of the Israelites, —

"Et puro livescit pontus in auro";[2]

the manna in the Desert; the giving of the Law; the gushing of water from the rock; and then the succession of Hebrew history, stretching to the time of Esdras, —

"Totaque picturæ series finitur in Esdra."[3]

At once, after these great obsequies, Alexander marches against Darius. And here the poet dwells on the scene of the Persian army watching by its camp-fires. Helmets rival the stars; the firmament is surprised to see fires like its own reflected from bucklers, and fears lest the earth be changed into sky and the night become day. Instead of the sun, there is the helmet of Darius, which shines like Phœbus himself, and at its top a gem of flame, obscuring the stars and yielding only to the rays of the sun; for, as much as it yields to the latter, so much does it prevail over the former. The youthful chieftain, under protection of a benignant divinity, passes the night in profound repose. His army is all marshalled for the day, and he still sleeps. He is waked, harangues his men, and gives the order for battle. The victory of Arbela is at hand.

The fifth book is occupied with a description of this battle. Here are episodes in imitation of the ancients, with repetitions or parodies of Virgil. The poet apostrophizes the unhappy, defeated Darius, as he is about to flee, saying, — "Whither do you go, O King, about to perish in useless flight? You do not know, alas!

[1] Lib. IV. 218. [2] Ibid., 220. [3] Ibid., 284.

lost one, you do not know whom you flee. While you flee from one enemy, you run upon other enemies. Desiring to escape Charybdis, you fall upon Scylla."

"Quo tendis inerti,
Rex periture, fuga? Nescis, heu! perdite, nescis
Quem fugias; hostesque incurris, dum fugis hostem;
Incidis in Scyllam, cupiens vitare Charybdim."[1]

The Persian monarch finds safety at last in Media, and Alexander enters Babylon in triumph, surpassing all other triumphs, even those of ancient Rome: and this is merited, — so sings the poet, — for his exploits are above those of the most celebrated warriors, whether sung by Lucan in magnificent style, or by Claudian in pompous verse. The poet closes the book by referring to the condition of Christianity in his own age, exclaiming, that, if God, touched by the groans and the longings of his people, would accord to the French such a king, the true faith would soon shine throughout the universe. Had he witnessed either Bonaparte on the throne of France, it is doubtful if he would not have regretted his supplicatory prophecy, or rejected them as unworthy of Alexander.

The sixth book glows with the luxury of Alexander at Babylon, the capture of Susa, the pillage of Persepolis. Here the poet forgets the recorded excesses of his hero, with Thaïs by his side, and the final orgy, when the celebrated city was handed to the flames at the bidding of a courtesan; but he dwells on an incident of his own invention, calculated to excite emotions of honor rather than of condemnation. Alexander meets three thousand Greek prisoners, wretchedly mutilated by

[1] Lib. V. 308 – 311. Some of the expressions of this passage may be compared with other writers. See Burmanni Anthologia Veterum Latinorum Epigrammatum et Poematum, Lib. I. Ep. CLXXVIII. 44, 199, Tom. I. pp. 152, 163; Ovidii Metam., Lib. I. 514, 515.

the Persians, and delivers them. He leaves to them the choice of returning to Greece, or of fixing themselves in the country there on lands he promises to distribute. Some propose to go back. Others insist, that, in their hideous condition, they cannot return to the eyes of their families and friends, when an orator declares that it is always pleasant to see again one's country, that there is nothing shameful in the condition caused by a barbarous enemy, and that it is unjust to those who love them to think that they will not be glad to see them. A few follow the orator; but the larger part remain behind, and receive from their liberator the land he had promised, also money, flocks, and whatever was necessary for farmers.

In the seventh book we meet the treason of Bessus substantially as in Quintus Curtius. Darius, with chains of gold on his feet, is carried in a closed vehicle to be delivered up. Alexander, who was still in pursuit of his enemy, is horror-struck. With more rapidity he moves to deliver or to avenge the Persian monarch than he ever moved to his defeat. He is aroused against the criminals, like Jupiter pursuing the Giants with his thunder. Darius is found in his carriage covered with wounds and bathed in his blood. With the little breath that remains, and yet struggling on the last confines of life, he makes a long speech, which the poet follows with bitter exclamations against his own age, beginning with venal Simon and his followers, and ending with the assassins of Thomas à Becket: —

> "Non adeo ambiret cathedræ venalis honorem
> Jam vetus ille Simon, non incentiva malorum
> Pollueret sacras funesta pecunia sedes." [1]

[1] Lib. VII. 327 - 329.

Thus here again the poet precedes Dante, whose terrible condemnation of Simon has a kindred bitterness: —

"O Simon mago, o miseri seguaci,
Che le cose di Dio, che di bontate
Denno essere spose, voi rapaci
Per oro e per argento adulterate." [1]

These ejaculations are closed by an address to the manes of Darius, and a promise to immortalize him in the verse of the poet. The grief of Alexander for the Persian queen is renewed for the sovereign. The Hebrew Apelles is charged to erect in his honor a lofty pyramid in white marble, with sculptures in gold. Four columns of silver, with base and capital of gold, support with admirable art a concave vault, where are represented the three continents of the terrestrial globe, with their rivers, forests, mountains, cities, and people. In the characteristic description of each nation, France has soldiers and Italy wine: —

"Francia militibus, celebri Campania Bacco." [2]

From funeral the poet passes to festival, and portrays the banquets and indulgence to which Alexander now invites his army. Sedition ensues. The soldiers ask return to their country. Alexander harangues and awakens the love of glory. They swear to confront all dangers, following him to the end of the world.

The eighth book chronicles the march into Hyrcania; the visit of Talestris, queen of the Amazons, and her Amazonian life, with one breast burnt so as to accommodate the bent bow; then the voluntary sacrifice of all the immense booty of the conqueror, as an example for the troops; then the conspiracy against Alexander in his own camp, with the examination and torture of the son of Parmenio, suspected of complicity; and then

[1] Inferno, Canto XIX. 1–4. [2] Lib. VII. 420.

the doom of Bessus, the murderer of Darius, who is delivered by Alexander to the brother of his victim. Then comes the expedition to Scythia. The Macedonian, on the banks of the Tanaïs, receives an embassy. The ambassador fails to delay him; he crosses the river, and reduces the deserts and mountains of Scythia. And here the poet likens this people, which, after resisting so many powerful nations, now falls under the yoke, to a lofty, star-seeking Alpine fir, "*astra petens abies*," [1] which, after resisting for ages all the winds of the East, of the West, and of the South, falls under the blows of Boreas. The name of the conqueror becomes a terror, and other nations in this distant region submit voluntarily, without a blow.

The ninth book commences with a mild allusion to the murder of Clitus, and other incidents, teaching that the friendships of kings are not perennial: —

"Etenim testatur eorum
Finis amicitias regum non esse perennes." [2]

Here comes the march upon India. Kings successively submit. Porus alone dares to resist. With a numerous army he awaits the Macedonian on the Hydaspes. The two armies stand face to face on the opposite banks. Then occurs the episode of two youthful Greeks, Nicanor and Symmachus, born the same day, and attached like Nisus and Euryalus. Their perilous expedition fails, under pressure of numbers, and the two friends, cut off and wounded, after prodigies of valor, at last embrace, and die in each other's arms. Then comes the great battle. Porus, vanquished, wounded, and a prisoner, is brought before Alexander. His noble spirit touches the generous heart of the conqueror, who re-

[1] Lib. VIII. 493.

[2] Lib. IX. 17, 18.

stores his dominions, increases them, and places him in the number of friends: —

"Odium clementia vicit." [1]

The gates of the East are now open. His movement has the terror of thunder breaking in the middle of the night, —

"Quem sequitur fragor, et fractæ collisio nubis." [2]

A single city arrests the triumphant march. Alexander besieges it, and himself mounts the first to the assault. His men are driven back. Then from the top of the ladder, instead of leaping back, he throws himself into the city, and alone encounters the foe. Surrounded, belabored, wounded, he is about to perish, when his men, learning his peril, redouble their efforts, burst open the gates, inundate the place, and massacre the inhabitants. After a painful operation, Alexander is restored to his army and to his great plans of conquest. The joy of the soldiers, succeeding sorrow, is likened to that of sailors, who, after seeing the pilot overboard, and ready to be ingulfed by the raging floods, as Boreas plays the Bacchanal, "*Borea bacchante,*" [3] at last behold him rescued from the abyss and again at the helm. But the army is disturbed by preparation for distant maritime expeditions. Alexander avows that the world is too small for him; that, when it is all conquered, he will push on to subjugate another universe; that he will lead them to the Antipodes, and to another Nature; and that, if they refuse to accompany him, he will go forth alone, and offer himself as chief to other people. The army is on fire with this answer, and vow again never to abandon their king.

The tenth book is the last. Nature, indignant that a

[1] Lib. IX. 303. [2] Ibid., 348. [3] Ibid., 503.

mortal should venture to penetrate her hidden places, suspends unfinished works, and descends to the lower world for succor against the conqueror. Before the gates of Erebus, under the walls of the Stygian city, —

"Ante fores Erebi, Stygiæ sub mœnibus urbis," [1] —

are sisters, monsters of the earth, representing every vice, — thirst of gold, drunkenness, gluttony, treachery, detraction, envy, hypocrisy, adulation. In a distant recess is a perpetual furnace, where crimes are punished, but not with equal flames, as some are tormented more lightly and others more severely. Leviathan is in the midst of his furnace; but he drops his serpent form, and assumes the divine aspect he had worn when wishing to share the high Olympus, —

"Cum sidere solis
Clarior intumuit, tantamque superbia mentem
Extulit, ut summum partiri vellet Olympum." [2]

To him the stranger appeals against the projects of Alexander, which extend on one side to the unknown sources of the Nile and the Garden of Paradise, and on the other to the Antipodes and ancient Chaos. The infernal monarch convenes his assembly on the plains where agonize the souls of the wicked in undying torments, —

"quibus mors
Est non posse mori," [3] —

and where, as in the Inferno of Dante, ice and snow, as well as fire, are punishments. The satraps of Styx are collected, and the ancient Serpent addresses sibilations from his hoarse throat: —

"Hic ubi collecti satrapæ Stygis et tenebrarum,
Consedere duces, et gutture sibila rauco
Edidit antiquus serpens." [4]

[1] Lib. X. 41.
[2] Ibid., 89-91.
[3] Ibid., 123, 124.
[4] Ibid., 131-133.

He commands the death of the Macedonian king before his plans can be executed. Treason rises and proposes poison. All Hell applauds; and Treason, in disguise, fares forth to instruct the agent. The whole scene suggests sometimes Dante and sometimes Milton. Each was doubtless familiar with it. Meanwhile Alexander returns to Babylon. The universe is in suspense, not knowing to which side he will direct his arms. From all quarters ambassadors come to his feet. In the pride of power he is universal lord. At a feast, surrounded by friends, he drinks the fatal cup. His end approaches, showing to the last grandeur and courage. The poet closes, as he began, with salutation to his patron.

Such is the sketch of a curiosity of literature. It is interesting to look upon this little book, which for a time played so considerable a part; to imagine the youthful students once nurtured by it; to recognize its relations to an age when darkness was slowly yielding to light; to note its possible suggestions to great poets who followed, especially to Dante; and to behold it lost from human knowledge, and absolutely forgotten, until saved by a single verse, which, from its completeness of form and its proverbial character, must live as long as the Latin language. The verse does not occupy much room; but it is a sure fee-simple for the poet. And are we not told by an ancient, that it is something, in whatsoever place or corner, to have made one's self master of a spot big enough for a single lizard?

> "Est aliquid, quocumque loco, quocumque recessu,
> Unius sese dominum fecisse lacertæ." [1]

[1] Juvenal, Sat. III. 230, 231.

A poem of ten books shrinks to a very petty space. There is a balm of a thousand flowers, and here a single hexameter is the express essence of many times a thousand verses. It was the jest of Hamlet, conversing with Horatio in the churchyard, that the noble Alexander, returning to dust and loam, had stopped a bung-hole. But the memorable poem celebrating him, while reduced as much, may be put to far higher and more enduring use.

MORAL.

At the conclusion of a fable there is a moral, or, as sometimes called, the application. There is a moral now, or, if you please, the application. And, believe me, in these serious days, I should have little heart for literary diversion, if I did not hope to make it help those just principles which are essential to the well-being, if not the safety, of the Republic. To this end I have written. This article is only a long whip with a snapper.

Two verses rescued from the wreck of a once popular poem have become proverbs, and one of these is very famous. They inculcate clemency, and the common sense found in not running upon one danger to avoid another. Never was the lesson more needed than now, when, in the name of clemency to belligerent traitors, the National Government is preparing to abandon the freedman, to whom it is bound by the most sacred ties, — is preparing to abandon the national creditor also, with whose security the national welfare is indissolubly associated, — and is even preparing, without probation or trial, to invest belligerent traitors, who for four bloody years have murdered our fellow-citizens,

with those Equal Rights in the Republic which are denied to friends and allies, so that the former shall rule over the latter. Verily, here is a case for common sense.

The lesson of clemency is of perpetual obligation. Thanks to the mediæval poet for teaching it! Harshness is bad. Cruelty is detestable. Even justice may relent at the prompting of mercy. Fail not, then, to cultivate the grace of clemency. Perhaps no scene in history is more charming than that of Cæsar, who, after vows against an enemy, listened calmly to the appeal for pardon, and, listening, let the guilty papers fall from his hand. Early in life he had pleaded in the Senate for the lives of conspirators; and afterwards, when supreme ruler of the Roman world, practised the clemency he had once defended, except where enemies were incorrigible, and then he knew how to be rigorous and firm. By example we are instructed; and from the great master of clemency we may well learn that the general welfare must not be sacrificed to this indulgence. And also from the Divine Teacher we may learn, that, even while forgiving enemies, there are Scribes and Pharisees to be exposed, and money-changers who must be scourged from the temple. But with us are Scribes and Pharisees, and there are also criminals, worse than any money-changers, now trying to establish themselves in the very temple of our Government.

Cultivate clemency. But consider well what is embraced in this charity. It is not required that you surrender the Republic into the hands of pardoned criminals. It is not required that you surrender friends and allies to the tender mercies of these same pardoned

criminals. Clearly not. Clemency has limitations; and when it transcends these, it ceases to be a virtue, and is only a mischievous indulgence. Of course, one of these limitations, never to be disregarded, is *the general security*, which is the first duty of Government. No pardon can be allowed to imperil the nation; nor can any pardon be allowed to imperil those rightfully looking to us for protection. There must be no vengeance upon enemies; but there must be no sacrifice of friends. And here is the distinction never to be forgotten. *Nothing for vengeance; everything for justice.* Follow this rule, and the Republic will be safe and glorious. Words attributed to Marcus Aurelius in a letter to his colleague in empire, Lucius Verus, are worthy to be repeated now by the chief of the Republic: —

> "Ever since the Fates
> Placed me upon the throne, two aims have I
> Kept fixed before my eyes; and they are these, —
> Not to revenge me on my enemies,
> *And not to be ungrateful to my friends.*" [1]

It is easy for the individual to forgive. It is easy, also, for the Republic to be generous. But forgiveness of offences must not be a letter of license to crime; it must not be recognition of an ancient tyranny, and it must not be stupendous ingratitude. There is a familiar saying, with the salt of ages, that is addressed to us now: "Be just before you are generous." Be just to all before you are generous to the few. Be just to the millions *only half rescued* from oppression, before you are generous to their cruel taskmasters. Do not imitate that precious character in the gallery of old Tallemant des Réaux, "who built churches with-

[1] Blackwood's Magazine, Vol. XCVIII. p. 346, September, 1865.

out paying his debts." Our foremost duties now are to pay our debts, and these are twofold, — first, to the national freedman, and, secondly, to the national creditor.

Apply these obvious principles practically. A child can do it. No duty of clemency can justify injustice. Therefore, in exercising the beautiful power of pardon at this moment, several conditions must be observed.

1. As a general rule, belligerent traitors, who have battled against the country, must not be permitted *at once*, without probation or trial, to resume old places of trust and power. Such a concession would be clearly against every suggestion of common sense, and President Johnson doubtless saw it so, when, addressing his fellow-citizens of Tennessee, June 9, 1864, he said: "I say that traitors should take a back seat in the work of restoration. If there be but five thousand men in Tennessee loyal to the Constitution, loyal to freedom, loyal to justice, these true and faithful men should control the work of reorganization and reformation absolutely."[1] Let belligerent traitors be received slowly and cautiously back into the sovereignty of citizenship. Better that they should wait than the general security be imperilled, or our solemn obligations, whether to the national freedman or the national creditor, impaired.

2. Especially are we bound, by every obligation of justice and by every sentiment of honor, to see that belligerent traitors, who have battled against their country, are not allowed to rule the constant loyalists, whether white or black, embracing the recent freedmen, our friends and allies.

[1] McPherson's Political History of the United States during Reconstruction, p. 46, note.

3. Let pardons issue only on satisfactory assurance that the applicant, who has been engaged for four years in murdering our fellow-citizens, shall sustain the Equal Rights, civil and political, of all men, according to the principles of the Declaration of Independence; that he shall pledge himself to the support of the national debt; and, if he be among the large holders of land, that he shall set apart homesteads for all his freedmen.

Following these simple rules, clemency will be a Christian virtue, and not a perilous folly.

The other proverb has its voice also, saying plainly, Follow common sense, and do not, while escaping one danger, rush upon another. You are now escaping from the whirlpool of war, which threatened to absorb and ingulf the Republic. Rush not upon the opposite terror, where another shipwreck of a different kind awaits you, while Sirens tempt with "song of death." Take warning: *Seeking to escape Charybdis, do not drive upon Scylla.*

Alas! the Scylla on which the Republic now drives is that old rock of *concession and compromise* which from the beginning has been a constant peril. It appeared in the Convention that framed the National Constitution, and ever afterwards, from year to year, showed itself in Congress, until at last the Oligarchy, nursed by our indulgence, rebelled. And now that the war is over, it is proposed to invest the same Rebel Oligarchy with a new lease of immense power, involving control over loyal citizens, whose fidelity to the Republic has been beyond question. Here, too, are Sirens, in the shape of belligerent traitors, suing softly that the Republic may be lured to the old concession

and compromise. *Alas, that, escaping Charybdis, we drive upon Scylla!*

The Oligarchy conducted all its operations in the name of State Rights, and in this name it rebelled. And when the Republic sought to suppress the Rebellion, it was replied, that a State could not be coerced. Now that the Rebellion is overthrown, and a just effort is made to obtain that "security for the future" without which the war will have been in vain, the same cry of State Rights is raised, and we are told again that a State cannot be coerced, — as if the same mighty power which directed armies upon the Rebellion could be impotent to exact all needful safeguards. To overcome these pretensions, and stamp *E Pluribus Unum* ineffaceably upon the Republic, we contended in war; and now we surrender again to these tyrannical pretensions. Escaping from war, we drive upon the opposite peril, — *as from Charybdis to Scylla.*

Again, we are told gravely, that the national power which decreed Emancipation cannot maintain it by assuring universal enfranchisement, because an imperial government must be discountenanced, — as if the whole suggestion of "imperialism" or "centralism" were not out of place until the national security is established, and our debts, whether to the national freedman or the national creditor, are placed where they cannot be repudiated. A phantom is created, and, to avoid this phantom, we drive towards concession and compromise, — *as from Charybdis to Scylla.*

Again, we are reminded that military power must yield to the civil power and to the rights of self-government. Therefore the Rebel States must be left to themselves, each with full control over all, whether

white or black, within its borders, and empowered to keep alive a Black Code abhorrent to civilization and dangerous to liberty. Here, again, we drive from one peril upon another. Every exercise of military power is to be regretted, and yet there are occasions when it cannot be avoided. War itself is the transcendent example of this power. But transition from war to peace must be assured by all possible safeguards. Civil power and self-government cannot be conceded to belligerent enemies until after the establishment of "security for the future." Such security is an indispensable safeguard, without which there will be new disaster. Therefore, in escaping from military power, care must be taken not to run upon the opposite danger, — *as from Charybdis to Scylla.*

Again, it is said solemnly, that "we must trust each other"; which, being interpreted, means that the Republic must proceed at once to trust belligerent enemies who have for long years murdered our fellow-citizens. Of course, this is only another form of surrender. In trusting them, we concede political power, including license to oppress loyal persons, whether white or black, and especially the freedmen. For four years we have met them in battle; and now we run to trust them, and commit into their keeping the happiness and well-being of others. There is peril in trusting such an enemy, more even than in meeting him on the field. God forbid that we drive now upon this rock, — *as from Charybdis to Scylla!*

The true way is easy. Follow common sense. Seeking to avoid one peril, steer clear of another. Consider how everything of worth or honor is bound up with the national security and the national faith, — and

that, until these are fixed beyond change, agriculture, commerce, and industry of all kinds must suffer. Capital cannot stay where justice is denied. Emigration must avoid a land blasted by the spirit of caste. Cotton itself will refuse to grow until labor is assured its just reward. By natural consequence, the same Barbarism which has drenched the land in blood will continue to prevail, with wrong, outrage, and the insurrections of an oppressed race; the national name will be dishonored, and the national power weakened. But the way is plain to avoid these calamities. *Follow common sense; and obtain guaranties commensurate with the danger.* Do this without delay, so that security and reconciliation may not be postponed. Every day's delay is a loss to the national wealth and an injury to the national treasury. But if adequate guaranties cannot be obtained at once, then at least *postpone all present surrender to the Oligarchy,* trusting meanwhile to Providence for protection, and to time for that awakened sense of justice and humanity which must in the end prevail. And, finally, *be careful not to drive, under any pretence, from Charybdis to Scylla.*

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